

The article was alleged to be adulterated in that its quality fell below that which it purported and was represented to possess, since it contained holes and was not suitable for use as a prophylactic.

It was alleged to be misbranded in that the following statements in the labeling, "Notice: The enclosed sheath has been 'Water Tested' by expanding, under water pressure, to at least ten times its normal capacity—then examined closely for any detectable leak," were false and misleading, since such statements represented and suggested that the article was free from defect, whereas it was not.

On August 24, 1942, no claimant having appeared, judgment of condemnation was entered and it was ordered that the product be cut up and disposed of as scrap rubber.

**881. Adulteration and misbranding of collodion. U. S. v. 1,476 Bottles, 6,000 Bottles, and 2,738 Bottles of Collodion U. S. P. Default decrees of condemnation. Portions of product ordered destroyed; remainder (2,738 bottles) ordered delivered to the Food and Drug Administration. (F. D. C. Nos. 8043, 8076, 8270. Sample Nos. 5255-F, 6202-F, 9339-F.)**

On August 1, 10, and 28, 1942, the United States attorneys for the Eastern District of Missouri, the Southern District of Ohio, and the Western District of Texas filed libels against 1,476 bottles of collodion at St. Louis, Mo., 6,000 bottles of collodion at Columbus, Ohio, and 2,738 bottles of collodion at San Antonio, Tex., alleging that the article had been shipped in interstate commerce within the period from June 11 to July 18, 1942, by the Conray Products Co., Inc., from New York, N. Y.; and charging that it was adulterated and misbranded. The article was labeled in part: "Collodion U. S. P.," or "Conray 1 oz. Collodion U. S. P."

The article was alleged to be adulterated in that a mixture containing an ester such as amyl acetate had been substituted for collodion U. S. P.

It was alleged to be misbranded in that the statement "Collodion U. S. P." was false and misleading since it did not have the composition specified by the United States Pharmacopoeia for collodion.

On November 19 and December 24, 1942, no claimant having appeared, judgment of condemnation was entered and 7,476 bottles of the product were ordered destroyed. On October 23, 1942, no claimant having appeared, the court ordered that a default decree of condemnation be entered and the lot located at San Antonio, Tex., delivered to the Food and Drug Administration.

**882. Adulteration of cocoa butter. U. S. v. 35 Dozen Packages of Miami Cocoa Butter. Default decree of condemnation. Product ordered rendered for use in war purposes. (F. D. C. No. 8172. Sample No. 4721-F.)**

On August 20, 1942, the United States attorney for the Southern District of Ohio filed a libel against 35 dozen packages of Miami cocoa butter at Cincinnati, Ohio, which had been shipped in interstate commerce on or about August 4, 1942, alleging that the article had been shipped by Hampden Sales Association, Inc., from New York, N. Y.; and charging that it was adulterated.

Analysis of a sample showed that it contained approximately 44 percent of some material other than cocoa butter, such as paraffin or petrolatum.

The article was alleged to be adulterated in that a substance other than cocoa butter, i. e. paraffin and petrolatum, had been substituted in part for the article, and had been mixed and packed therewith so as to reduce its quality.

On November 18, 1942, no claimant having appeared, judgment of condemnation was entered and it was ordered that the cocoa butter be delivered to a rendering firm for recovering the fats and oils for war purposes.

## DRUGS AND DEVICES ACTIONABLE BECAUSE OF FALSE AND MISLEADING CLAIMS\*

### HUMAN USE

**883. Action to restrain interstate shipment of a misbranded device known as "Magnetic Ray Appliance" and "Magnetic Ray Instrument". U. S. v. Frank B. Moran (Magnetic Ray Co.). Permanent injunction granted. (Inj. No. 19.)**

This device consisted of an electric appliance which would produce a magnetic field. It was accompanied by labeling which recommended its application to various parts of the body and represented that it would be of value in the

\*See also Nos. 851-856, incl., 860-868, incl., 871-881, incl.

treatment of many disease conditions. Its physical properties are described in the court's "Findings of Fact."

On May 13, 1942, the United States attorney for the Northern District of Texas filed a complaint against Frank B. Moran, trading as The Magnetic Ray Co., at Dallas, Tex., alleging that the defendant, for several months past, and more particularly since May 1, 1940, up to and including the time of the filing of the complaint, had been introducing or delivering for introduction into interstate commerce or causing such introduction or delivery for introduction into interstate commerce a certain device under the names "Magnetic Ray Appliance" and "Magnetic Ray Instrument"; that accompanying each unit of the device were certain circulars or folders entitled "Directions for Taking Magnetic Ray Treatments," and "Magnetic Rays," respectively, which contained statements which represented that it would produce a powerful, penetrating ray which would prevent and relieve human ills, restore and preserve health, and fight disease; that the rays so produced would prevent "auto-toxemia" due to faulty elimination of poisons, or absorption of poison into the blood from sluggish or constipated intestines, infected tonsils, teeth, sinuses, or other infections, colds, influenza, pneumonia, overeating, improper diet or over-indulgences; that treatment by the rays would eliminate the condition "auto-toxemia," promote and equalize circulation, relieve congestion in every part of the body, relieve pain and other distressing physical sensations, produce marked relaxation, promote sound and refreshing sleep, remove causes which may lead to surgical operations, stimulate a normal functioning of the various glands and other organs of the body, overcome fatigue, raise the vital tone of the system, thereby increasing both mental and physical efficiency, exert a revitalizing influence upon the sexual or procreative glands, and clear the complexion; that the rays were invaluable as a beauty treatment and would cause absorption of abnormal growths and other deposits such as goiter, tumors of various kinds, and blood clots resulting from hemorrhage due to high blood pressure; that the rays would improve circulation and elimination and thus result in a high state of vitality and a greater resistance to every sort of disease; that the device would treat more than one disease at a time; that the rays would exert a more direct influence upon the large centers of the sympathetic nervous system and the nerve centers of the spinal cord; and that the device and the rays produced were an adequate and competent treatment for asthma, anemia, arthritis, Bright's disease, bladder troubles, bronchitis, colds, constipation, catarrh, catarrhal deafness, diabetes, disorders of the prostate, deafness, eczema, epilepsy, goiter, hay fever, hemorrhoids, heart disease, headache, high blood pressure, indigestion, insomnia, impotence, low blood pressure, lumbago, menstrual troubles, neuralgia, neuritis, nervous irritability, nervous troubles, organic heart disease, obesity, pelvic organ affections, painful menstruation, painful feet, swollen feet, severe pain, paralysis, rheumatism, sciatica, sinus trouble, toxemia, tuberculosis, tumors, ulcers, and varicose veins. The complaint alleged that such representations were false and misleading in that they created the impression that the device when used as directed in the labeling would be of substantial therapeutic value in the treatment of the many and varied human ailments, disorders, and diseases named in the labeling, whereas it was a low-frequency, coreless solenoid which would produce a magnetic field of the same frequency as that of the electric current to which it was attached, and had no therapeutic value.

The complaint alleged further that the defendant would continue to introduce or deliver the device or a similar device for introduction into interstate commerce, misbranded as hereinbefore set forth, or would cause such acts, and would continue to evade and defeat the provisions of the law to the injury of the public unless restrained from so doing, and prayed that the court perpetually enjoin and restrain him and all those acting on his behalf from such unlawful acts; that an order be entered that the defendant show cause why injunction should not issue, and that during the pendency of the action he be enjoined and restrained, and that, upon hearing, a preliminary injunction issue pending the termination of the issues.

On June 29, 1942, the motion for a preliminary injunction having been denied, the case came on for trial on the merits before the court. Evidence was introduced on behalf of the Government and of the defendant, the trial concluding on June 30, 1942. Judgment was entered for the Government on June 30, 1942; the court made the following findings of fact, and conclusions of law:

## FINDINGS OF FACT

1.

"I find that the belt with its auxiliary flashlight, is a device within the meaning of Section 331 of Title 21, of the U. S. C. A.

2.

"That this device and the literature which accompanies it is harmless. There is nothing about it that would hurt anyone or harm the citizen. There is about it that which will be helpful to many as examples of the many have been exhibited in this court. Even if one is not afflicted and one thinks one is afflicted and suffers the pain of an affliction which really one does not have, that one is a sufferer nevertheless, and that which remedies the suffering and makes that one well, receives a benefit, so that the device is not only not harmful, but it is beneficial.

3.

"It is misbranded within the meaning of the statute in that it mentions a number of diseases which it manifestly will not cure, nor will it benefit the patient who has them, by the eradication of those diseases, to any extent whatever.

4.

"That it is a coreless solenoid. The larger part of the device is made up of about six hundred coils of electric-carrying wire—that is, a wire which is a conductor. These are tied together, and then covered by a sort of a leather jacket. Running from this device is a cord, electric conductor, which punches into an electric socket, and after that connection with the electric power is made, in order to discover whether electricity is moving from the socket through the device, and perhaps—which the court does not find—to work upon the cupidity of the patient, a smaller circle, or, coil of wire is placed horizontally with the larger coil of wire and then flashes from the inside of the smaller coil a little light like a little electric light globe, showing that the current passes and which did not pass before the cord was placed in the electric socket. That the carrying capacity of this device is approximately forty watts. A smaller amount than is found in the ordinary electric light globe in the ordinary American home.

5.

"That the electricity which passes from the socket to this coiled wire does just that and nothing else, save and except that it raises the temperature of the device somewhat, but not to the extent of increasing circulation, or, increasing gland activity, or, inducing pathology in the body which is enclosed within this circle, as makes the presentment and exposition of this sort of heat to the body, by other devices, effective.

6.

"I think I have said before, but I now find as a fact, that many think that this has benefited, or cured, them of the ailment with which they were suffering, and that they communicated that fact to the defendant and to others."

## CONCLUSIONS OF LAW

"From what I have said, it follows as a conclusion of law that the defendant will be enjoined from shipping either the device itself, or, this literature relating to it, or, in any other way, contributing to its sale or distribution in interstate commerce, but not to be interfered with in any way in his continuity, so far as this suit is concerned, in intrastate commerce.

"You will prepare the decree, Mr. District Attorney, to be okayed by the other side, saving such exceptions as they may desire."

On the same date, judgment was entered ordering that the defendant, his agents, employees, representatives, and all others acting by or under his direction or authority, and all persons, firms, or corporations acting with or for him, be perpetually enjoined and restrained from, in any manner or by any

device directly or indirectly, further introducing or delivering for introduction into interstate commerce or causing such act, any device named "Magnetic Ray Appliance," or "Magnetic Ray Instrument," or any similar device similarly labeled in the manner as the said device.

**884. Misbranding of Compound Syrup of White Pine and Tar, Medical Compound for Women, and VeDor No. 578 Injection. U. S. v. Primrose R. Devore (Drug Products Co.). Plea of guilty. Fine, \$1,500 and 6 months in jail. (F. D. C. No. 7238. Sample Nos. 49046-E, 49048-E, 49049-E.)**

On June 29, 1942, the United States attorney for the Southern District of Ohio filed an information against Primrose R. Devore, trading as Drug Products Co., Columbus, Ohio, alleging shipment on or about June 18 and September 4, 1941, from the State of Ohio into the State of Texas of quantities of the above-named products.

Analysis of a sample of Compound Syrup of White Pine and Tar showed that it consisted essentially of small proportions of ammonium chloride, pine tar, menthol and methyl salicylate, sugar, alcohol, and water. The article was alleged to be misbranded (1) in that the name "Compound Syrup of White Pine And Tar Not U. S. P." was false and misleading as it created the impression that the article was "Compound Syrup of White Pine," recognized in the National Formulary, to which tar had been added; and (2) in that the following statements were false and misleading since the article would not be efficacious for these conditions: "A Combination of Meritorious Ingredients Highly Beneficial in Temporary Pulmonary Conditions Caused by Exposure," and "A Successful Preparation for the Treatment of \* \* \* Ordinary Colds, Bronchial Irritations \* \* \* Temporary Relief for \* \* \* Colds \* \* \* Bronchitis, etc."

Analysis of a sample of the Medical Compound for Women showed that it consisted essentially of extracts of plant drugs, including an alkaloid-bearing drug, sugar, and water, preserved with benzoic acid. The article was alleged to be misbranded in that the statement "Medical Compound for Women" was false and misleading as the drug was not efficacious in the cure, mitigation, treatment, or prevention of diseases or ailments of women.

Analysis of a sample of VeDor No. 578 Injection showed that it consisted essentially of small proportions of zinc sulfate, lead acetate, and water. The article was alleged to be misbranded (1) in that the statement "Use in connection with Anti-Gon Internal No. 578" was false and misleading since it implied that this article constituted a part of a treatment for gonorrhea and that when used in connection with another drug, Anti-Gon Internal No. 578, it would be efficacious in the treatment of gonorrhea, whereas the article had no value either alone or in conjunction with such other drug in the treatment of that disease; (2) in that the label failed to declare the common name of each active ingredient since zinc sulfate was not declared; and (3) in that it was a drug in package form and the label failed to bear an adequate statement of the quantity of the contents.

On October 21, 1942, the defendant entered a plea of guilty, whereupon the court imposed a fine of \$500 on each of the 3 counts, a total of \$1,500, and 6 months in jail on each of the 3 counts, the jail sentences to run concurrently.

**885. Misbranding of Glucocinine. U. S. v. Eric M. Boehnke (Glucocinine Company of America). Plea of guilty. Fine, \$300 and 4 months in jail. (F. D. C. No. 5581. Sample No. 31575-E.)**

On May 13, 1942, the United States attorney for the Eastern District of New York filed an information against Eric Boehnke, trading as Glucocinine Co. of America, at Richmond Hill, N. Y., alleging shipment on or about January 23, 1941, from the State of New York into the State of Michigan of a quantity of Glucocinine which was misbranded.

The article was alleged to be misbranded in that certain statements in the labeling, and a graph purporting to show the reduction of blood sugar brought about by use of the article in experimental animals, were false and misleading in that they represented and suggested that the article would be efficacious in the treatment of light and medium cases of diabetes mellitus, that it would be efficacious as a preventative of diabetes, that it would act beneficially on the pancreas and would arouse the pancreas to new activity, and that it would be efficacious to clear the urine of sugar and reduce the blood sugar to a negative point, whereas it would not be efficacious for such purposes.

It was alleged to be misbranded further in that the statements: "Plant Insulin substances," "Glucocinine \* \* \* is PLANT INSULIN, i. e., substances which occur in large quantities in certain plants and may be regarded as the