

FINDINGS OF FACT

"Upon statement of counsel, Marcus L. Friedman, Assistant United States Attorney for the Northern District of Ohio, Western Division, and Eugene Farber, of Farber and Cochrane, attorneys for the defendants, the Court makes the following findings of fact:

"1. That the said Conestoga Cream and Cheese Manufacturing Corporation is a corporation organized and existing under the laws of the State of New York, and has a place of business at Lima, Ohio.

"2. That Snier Sam Silberman, also known as Sam Silberman, an individual, is Manager of the said place of business at Lima, Ohio.

"3. Between October, 1942 and June 6, 1945, the Lima, Ohio branch of Conestoga Cream and Cheese Manufacturing Corporation was engaged in the manufacture of cheese, a majority of which was shipped in interstate commerce.

"4. During the said period, the said defendants shipped in interstate commerce, cheese products which contained foreign and adulterated matter.

"5. That the plant was in an insanitary condition.

"6. That such cheese products as were manufactured by the cheese company at its plant at Lima, Ohio, were unfit for food.

CONCLUSIONS OF LAW

"1. The Court has jurisdiction of the parties and the subject matter in this case.

"2. That Congress intended that the word, 'filthy' as used in the Act should be construed to have its usual and ordinary meaning.

"3. That the products manufactured by the Conestoga Cream and Cheese Manufacturing Corporation contained foreign and adulterated substances, and were shipped in interstate commerce, contrary to the Act; and within the meaning of Title 21, U. S. C. A., Section 332 (a), in that it consisted in part of filthy and decomposed substances and was unfit for food.

"4. That the relief prayed for in the Complaint should be granted."

The court thereupon announced that the defendants would be given until June 30, 1945, to correct the conditions complained of, or otherwise an injunction would be issued.

On June 28, 1945, the court entered an order permanently enjoining the defendants from shipping in interstate commerce, adulterated cheese products made in their Lima, Ohio, plant.

On July 25, 1945, the defendants filed an application to vacate the injunction. The application was denied by the court on January 7, 1946.

9720. Action to enjoin and restrain the interstate shipment of adulterated cheese and cheese products. U. S. v. Leo Williams, trading as Leo Williams, L. W. Williams, Lakeside Creamery, and Lakeside Cheese Co. Tried to the court. Consent decree ordering permanent injunction. (Inj. No. 125.)

COMPLAINT FILED: November 8, 1945, District of Vermont, against Leo Williams, Craftsbury, Vt., trading under the above names.

NATURE OF CHARGE: That since July 26, 1945, the defendant had been preparing, packing, and offering for interstate shipment and shipping in interstate commerce, cheese or milk curd under insanitary conditions; that the product so prepared, packed, and shipped, was adulterated in violation of Section 402 (a) (3), in that it consisted in whole or in part of a filthy substance which was unfit for food; and, Section 402 (a) (4), it had been prepared and packed under insanitary conditions whereby it became contaminated with filth. The complaint also charged the existence, among other conditions, of the following: The plant of the defendant was insanitary and was fly- and rodent-infested. Milk accepted and used in the manufacture of cheese contained sand, manure fragments, rodent hair fragments, cow hair fragments, and similar filth. The defendant had been accepting and using whole milk that had been rejected by fluid milk receiving stations of the area. Flies breeding in manure and in a nearby pig lot had free access to the plant.

The complaint alleged also that several seizures had been made of the defendant's products which had been shipped in interstate commerce and which were found to contain one or more of the following: Rodent, cat, and cow hairs, and insect fragments and whole insects.

PRAYER OF COMPLAINT: That process issue and, after hearing, a preliminary injunction issue, restraining the defendant from shipping in interstate commerce adulterated food which he had manufactured or would manufacture in the future; and that, after due proceedings, the preliminary injunction be made permanent.

DISPOSITION: The defendant was ordered to show cause why a preliminary injunction should not issue as prayed. On December 21, 1945, the defendant having consented, a preliminary injunction was issued. On March 6, 1946, the case having come on for hearing, and evidence having been introduced on behalf of the Government and the defendant, counsel for the defendant announced that no objection would be made to the granting of a permanent injunction. Judgment was thereupon entered, permanently enjoining the defendant and all acting on his behalf from the commission of the acts complained of.

9721. Adulteration and misbranding of grated cheese. U. S. v. Wm. Faehndrich, Inc., and Rudolph H. Faehndrich. Pleas of guilty. Fine, \$750 against corporate defendant. Suspension of imposition of sentence against individual defendant. (F. D. C. No. 12607. Sample No. 35253-F.)

INFORMATION FILED: August 29, 1945, Southern District of New York, against Wm. Faehndrich, Inc., New York, N. Y., and Rudolph W. Faehndrich, president of the corporation.

ALLEGED SHIPMENT: February 20, 1944, from the State of New York into the State of Florida.

PRODUCT: This product was packed under two different labels. One label represented it to be an all cheese product; the other, a mixture of cheese with 15 percent added milk solids. Examination of samples showed that both lots contained approximately 35 percent of dried skim milk, and that they contained filth.

LABEL, IN PART: "Famous Brand * * * Grated * * * Cheese."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of rodent hair fragments, a rodent excreta pellet fragment, a human hair fragment, and a cow hair fragment; Section 402 (a) (4), it had been prepared, packed, and held under insanitary conditions whereby it may have become contaminated with filth; Section 402 (b) (2), (portion) a substance consisting of grated cheese and added dried skim milk had been substituted in whole or in part for grated cheese, and (remainder) a mixture of about 65 percent of grated cheese and about 35 percent of added dried skim milk had been substituted for a mixture of 85 percent of grated cheese and 15 percent of added milk solids; and, Section 402 (b) (4), (portion labeled "An All Cheese Product") dried skim milk had been added to the article and mixed and packed with it so as to reduce its quality.

Misbranding, Section 403, (a), (portion) the statements on the labels, "Grated Cheese" and "An All Cheese Product," and (remainder) "Grated Cheese" and "15% Added Milk Solids," were false and misleading; Section 403 (b), the article was offered for sale under the name of another food; and, Section 403 (i) (2), its labels did not bear the common or usual name of one of its ingredients, i. e., dried skim milk.

DISPOSITION: November 1, 1945. Pleas of guilty having been entered on behalf of both defendants, the court imposed a fine of \$250 on each of the 3 counts against the corporate defendant. Imposition of sentence against the individual defendant was suspended, and he was placed on probation for a period of 1 day.

9722. Adulteration of cheese spread. U. S. v. Spring Green Creamery and Cheese Industry, Inc. Plea of guilty. Fine, \$800. (F. D. C. No. 16575. Sample Nos. 78967-H, 97709-F to 97711-F, incl.)

INFORMATION FILED: October 25, 1945, Western District of Wisconsin, against Spring Green Creamery and Cheese Industry, Inc., Spring Green, Wis.

ALLEGED SHIPMENT: On or about November 3, 10, and 28, 1944, from the State of Wisconsin into the States of Illinois and Minnesota.

LABEL, IN PART: "Prins Hendrix Cheese Spread."