

12832. Adulteration of beverage sirups and sundaes topping. U. S. v. 10 Cases, etc. (F. D. C. No. 22746. Sample Nos. 54700-H, 55301-H, 55303-H, 55304-H.)

LIBEL FILED: April 2, 1947, Southern District of Georgia.

ALLEGED SHIPMENT: On or about September 11, 1946, by the Howard's Syrups Co., from Miami, Fla.

PRODUCT: 28 cases, each containing 24 1-pint bottles, of beverage sirups and 3 cases, each containing 6 ½-gallon jars, of sundaes topping at Brunswick, Ga.

LABEL, IN PART: "Howard's Beverage Syrup Thirst Quenchers Flavored Syrup Wild Cherry [or "Strawberry," or "Pineapple"] * * *"; (In small type on side panel) "Prepared with cane sugar, filtered water, citric acid, certified food coloring and imitation fruit flavoring ¼ of 1% Benzoate," and "Chop Suey Topping."

NATURE OF CHARGE: Adulteration (Chop Suey Topping), Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of larvae, and of a decomposed substance by reason of being fermented.

Misbranding (beverage sirups), Section 403 (a), the label designations, "Flavored Syrup Wild Cherry," "Flavored Syrup Strawberry," and "Flavored Syrup Pineapple," were false and misleading, since the products were acidulated, artificially flavored and colored sugar solutions; Section 403 (c), the products were imitations of other foods, and their labels failed to bear, in type of uniform size and prominence, the word "Imitation" and immediately thereafter, the name of the food imitated; and, Section 403 (e) (2), they failed to bear a label containing an accurate statement of the quantity of the contents.

DISPOSITION: May 10, 1947. Default decree of condemnation. The Chop Suey Topping was ordered destroyed, and the beverage bases were ordered delivered to a charitable organization or destroyed.

12833. Misbranding of Esterex. U. S. v. 12 Bottles of Esterex. Tried to the court. Decree of condemnation and destruction. (F. D. C. No. 18010. Sample No. 22198-H.)

LIBEL FILED: October 22, 1945, Eastern District of Missouri.

ALLEGED SHIPMENT: On or about July 31, 1945, by the C. O. & W. D. Sethness Co., from Chicago, Ill.

PRODUCT: 12 bottles of Esterex at St. Louis, Mo. Analysis showed that the article was an aqueous solution containing about 15 grams of monochloroacetic acid per 100 cc.

LABEL, IN PART: "Cosco Esterex * * * a buffered aqueous solution of monochloroacetic acid and its selected esters, salt, and glycerine. Directions—For stabilizing purposes use ½ ounce to each gallon of bottling syrup, or to 6 gallons of finished drink."

NATURE OF CHARGE: Misbranding, Section 403 (a), the labeling of the article was misleading, since the trade mark "Esterex" coupled with the directions for use, represented to purchasers that the article was wholesome and suitable for use as a component of beverages for man, whereas the article contained about 15 grams of monochloroacetic acid per 100 cc., which acid is a poisonous and deleterious substance, and the labeling failed to reveal the material fact, in the light of the representations in the labeling, that the article contained a poisonous and deleterious substance.

DISPOSITION: The C. O. & W. D. Sethness Co., claimant, having filed a motion for the removal of the case to a district within reasonable proximity to the claimant's principal place of business, an order was entered on December 11, 1945, overruling such motion. Subsequently, a motion for rehearing was filed by the claimant, and on January 15, 1946, the motion was overruled with the consent of the claimant. On January 21, 1946, an answer was filed by the claimant, denying that the product was misbranded. Thereafter, the case came on for trial before the court, and at its conclusion and after consideration of the evidence and briefs of the parties, the court on May 2, 1946, handed down the following findings of fact and conclusions of law: