

"2. The said article is a component of food and is therefore a food. (21 U. S. C. A. 321 (f))

"3. In determining whether labeling is misleading there shall be taken into account whether the labeling fails to reveal any fact material in the light of representations made on the labeling or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling thereof or under such conditions of use as are customary or usual. (21 U. S. C. A. 321 (n))

"4. As said in *United States v. 62 Packages * * * Marmola Tablets*, 48 Fed. Supp. 878, l. c. 887:

The Federal Food Drug and Cosmetic Act was not made for experts nor is it intended to prevent self-medication. The purpose of the law is to protect the public, the vast multitude which includes the ignorant, the unthinking and the credulous, who, when making a purchase, do not stop to analyze.

"5. The labeling on said article is misleading in that it fails to reveal that the said article contains a poisonous, toxic and caustic substance and said fact is material in the light of the representation that said article is to be used as a component of liquids for human consumption.

"6. The labeling in the cause herein is misleading and should contain the definite information that monochloroacetic acid is poisonous.

"7. The said article seized herein was misbranded while in interstate commerce.

"8. The said article was seized in the Eastern District of Missouri, Eastern Division.

"9. On the facts heretofore found, Libelant is entitled to condemnation and forfeiture of said article and for costs to be assessed against the claimant."

On May 2, 1946, judgment of condemnation was entered and the product was ordered destroyed. A motion for a new trial and a motion to amend the findings of fact and conclusions of law was subsequently filed on behalf of the claimant, but were overruled by the court on June 14, 1946.

12834. Misbranding of Esterex. U. S. v. 4 Jugs * * * (and 1 other seizure action). (F. D. C. Nos. 20615, 20634. Sample Nos. 45206-H, 49056-H.)

LIBELS FILED: August 8 and 20, 1946, Northern District of Texas and Southern District of California.

ALLEGED SHIPMENT: On or about July 19, September 21, and October 12, 1945, by the C. O. & W. D. Sethness Co., from Chicago, Ill.

PRODUCT: Esterex. 4 1-gallon jugs at Abilene, Tex., and 64 1-gallon bottles at Fowler, Calif.

LABEL, IN PART: "Cosco Esterex * * * Aqueous Solution of Monochloroacetic Acid."

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, whereas the article contained in one shipment about 19 percent and in the other shipment about 25 percent, of monochloroacetic acid, a poisonous and deleterious substance; and the labeling failed to reveal the material fact that the article contained a poisonous and deleterious substance.

DISPOSITION: November 26 and December 18, 1946. No claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

12835. Misbranding of sugar extender. U. S. v. 1 Pail * * * (and 1 other seizure action). (F. D. C. Nos. 22571, 23638. Sample Nos. 54297-H, 81831-H.)

LIBELS FILED: February 27 and August 26, 1947, District of Idaho and Southern District of Florida.

ALLEGED SHIPMENT: On or about November 15, 1946, and January 10, 1947, by the Vitaplex Co., from Chicago, Ill.

PRODUCT: Sugar extender. 1 3-gallon pail at St. Maries, Idaho, and 1 3-gallon pail at Belle Glade, Fla.

LABEL, IN PART: "Vitaplex Brand Single Strength Sugar Extender. Not a Saccharin Product 1 Gal. Vitaplex replaces 230 lbs. of sugar. Usable in all