

antor is liable when there is no breach of the condition of the bond. The whole plan was to have a substituted liability in case the violator of the Act became such in good faith. This decision makes a new, independent and original liability where there has been no alleged violation by moving the goods in interstate commerce.

"I do not think we should take such liberties in expanding a criminal statute in which the sovereign once was considered under a duty to be explicit and the subject entitled to the doubt."

On November 20, 1947, a new motion to dismiss having been filed in the District Court by the defendant, on the grounds that the Government had failed to furnish the defendant with a portion of the official sample, although required to do so by Section 702 (b) of the Federal Food, Drug, and Cosmetic Act, the motion was granted and the case was dismissed.

12996. Alleged misbranding of Vitaminerals. U. S. v. 68 Bottles and 100 Printed Price Lists * * *. Tried to the court. Verdict for claimant.
(F. D. C. No. 18988. Sample No. 12340-H.)

LIBEL FILED: January 18, 1946, District of Massachusetts. On April 22, 1946, the court ordered the case removed for trial to the Northern District of California.

ALLEGED SHIPMENT: On or about September 24, 1945, by the Vitaminerals Co., from Los Angeles, Calif. One hundred printed price lists were shipped separately on or about the same date.

PRODUCT: 68 bottles of Vitaminerals and 100 printed price lists at Boston, Mass. Examination of the product showed that it was a mixture of dextrose sugar, wheat germ, and a small amount of malt.

NATURE OF CHARGE: Misbranding, Section 403 (a), it was alleged that the statements on the bottle label and the printed price lists were false and misleading in that they represented and suggested that the article when used as directed was an effective aid in following a reducing diet, in preventing discomfort due to diminished food intake, and in curbing the appetite; and that the article was of no significant value for such purposes. It was alleged further that the label designation "Vitaminerals" was false and misleading, in that the article was not a significant source of vitamins and minerals needed by man, as the designation represented and suggested.

DISPOSITION: On September 3 and 4, 1947, the Vitaminerals Co., claimant, having filed an answer denying the material allegations of the libel, the case was tried to the court. On December 3 the court made the following findings of fact and conclusions of law and entered judgment for the claimant, dismissing the libel:

HARRIS, District Judge:

FINDINGS OF FACT

"1. That Claimant, Vitaminerals Co., did, on or about September 24, 1946, as alleged in the libel of information on file herein, ship in interstate commerce from Los Angeles, California, to Boston, Massachusetts, via Railway Express Agency, an article of food consisting of 68 bottles, more or less, labelled in part:

No. 5 Vitaminerals A palatable nutritional supplement composed of defatted, dehydrated wheat embryo, non-diastatic malt, dextrose and vitamin B₁, for use in a required low caloric diet as an aid in appeasing the appetite for excess food.

And via parcel post, on or about September 24, 1946, 100 printed price lists, more or less, entitled 'VITAMINERALS CO.'

"2. That thereafter the Marshal of the District Court of the United States for the District of Massachusetts, pursuant to the Libel of Information in this case, did seize said articles of food and said price lists, and the same are now in his possession or under his control.

"3. That Vitaminerals Co. did file a verified claim of ownership to the articles seized in the Complaint herein.

"4. That the Claimant, Vitaminerals Co., did file an Answer in the cause herein.

"5. That upon application of Claimant, Vitaminerals Co., said cause was transferred from the District Court of the United States for the District of

Massachusetts to the above-entitled Court, and this Court now has jurisdiction of said cause pursuant to Section 304 (a) of the Food, Drug, and Cosmetic Act, 21 U. S. C. 334.

"6. That the bottle label (Libellant's Exhibit 1) is accurate in its representation that the aforesaid article is 'for use in a required low caloric diet as an aid in appeasing the appetite for excess food.'

"7. That the statements in Claimant's price list (Libellant's Exhibit 4) 'appetite curb tablets * * * to aid in diminishing hunger pains during weight reduction regimen' are not false or misleading.

"8. That the notation 'VITAMINERALS' appearing upon the label affixed to the aforesaid article (Libellant's Exhibit 1) is a purely fanciful and arbitrary word, used by the Claimant on the aforesaid article and approximately 34 of Claimant's other products, as a trade mark to denote the origin of such goods, and that said trade mark 'VITAMINERALS' as used on Claimant's bottle label (Libellant's Exhibit 1) neither represents nor suggests the vitamin or mineral content of the aforesaid article.

"9. That Claimant, Vitaminerals Co., is the owner of the articles seized and as such owner is entitled to the return of said articles.

"10. That the aforesaid article is of the composition stated upon Claimant's label (Libellant's Exhibit 1), and that none of the statements upon said label are false or misleading.

CONCLUSIONS OF LAW

I.

"This Court has jurisdiction of this libel of information, the article of food 'VITAMINERALS NO. 5,' and the parties hereto.

II.

"The Claimant's bottle label (Libellant's Exhibit 1) does not constitute misbranding in interstate commerce within the meaning of the Federal Food, Drug and Cosmetic Act (21 USC 343 (a), or any other section thereof); in any of its particulars, and the statements appearing thereon are neither false nor misleading.

III.

"Claimant's price lists entitled 'VITAMINERALS CO.' (Libellant's Exhibit 4) does not constitute misbranding within the meaning of the Federal Food, Drug and Cosmetic Act (21 USC 343 (a), or any other section thereof), in any of the particulars stated on Page 12 thereof with respect to the aforesaid article 'V. M. No. 5,' and the statements appearing therein are neither false nor misleading.

IV.

"Libellant herein, having completely failed to support the allegations of the libel of information by satisfactory proof, Respondent is entitled to a dismissal of the said libel of information with prejudice, and to the return of the articles and price lists seized, together with its taxable costs herein."

12997. Adulteration of Cal-Vitaron tablets. U. S. v. The Warren-Teed Products Co. Plea of guilty. Fine, \$300. (F. D. C. No. 20178. Sample No. 35915-H.)

INFORMATION FILED: February 26, 1947, Southern District of Ohio, against the Warren-Teed Products Co., a corporation, Columbus, Ohio.

ALLEGED SHIPMENT: On or about November 6, 1945, from the State of Ohio into the State of Missouri.

NATURE OF CHARGE: Adulteration, Section 402 (b) (1), a valuable constituent, vitamin D, had been in part omitted and abstracted from the article, in that each tablet of the article was represented to contain 100 U. S. P. units of vitamin D, whereas each tablet contained less than that amount of vitamin D.

The information charged also that the defendant shipped in interstate commerce a misbranded drug known as Vitaroid tablets, as reported in notices of judgment on drugs and devices, No. 2269.