

account, namely, 'ordinary and customary exposure, after such drug is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably result in decreased weight or measure,' as by short loading.

"To repeat, it seems to the court that if the Government desires to prosecute defendants in a case of this kind, it should support its case with more accurate data. The court realizes that it is not possible to lay down a rule of thumb requirement. There is bound to be some tolerance. In the present case the Government asserts that a proven shrinkage in the samples taken in the neighborhood of 1 ounce for every 16 ounces, which is the minimum quantity each bottle is labeled to contain, is an excessive shrinkage. Yet, as has just been noted, the measurement in open court indicates that perhaps such a shrinkage is due 'to ordinary and customary exposure.' There is no testimony in the present case as to what the actual extent of the evaporation of alcohol, or water, or both, would be over a given period of time in a preparation of this kind, under stated temperature conditions. Perhaps any such tests would produce variations which would not enable one to adopt a percentage rule, in any event. But the sum and substance of this court's conclusion is that the Government can not properly rely solely upon samples taken long after the shipments had been made, under variable temperature conditions, which do not represent an average of anything like an entire shipment, or shipment, especially since the Government has given to this defendant a clean bill of health as to its present loading facilities, without having its own representatives inspect such facilities and determine, and be prepared to prove that there has been short loading.

"At first blush it would seem that if a man says to the public, by the label on his bottle, that he has put 16 ounces of his preparation in that bottle when as a matter of fact when the bottle reaches the consumer there are only 15 or 14½ ounces in it, there is something wrong. But in the present case the evidence shows that a considerable portion of the liquid is highly volatile, being alcohol. It also shows that the Government has failed to determine by direct evidence whether the shortage actually occurred in the loading or by evaporation. It merely draws the conclusion from a relatively small number of samples that this shortage could not have occurred except in the loading. If the Government had investigated defendant's loading methods, and had immediately laid aside a number of the loaded bottles under conditions similar to the conditions which existed with respect to the samples that were tested, it could then be determined with accuracy whether there was shrinkage after loading, and to what extent, if any, there was short loading.

"What the court has said is not to be taken as meaning that one who prepares and sells a volatile preparation is not himself required to take that characteristic into account in bottling his preparation. Of course he is. But he is given the benefit of the tolerance rule contained in the regulations just referred to. And since this is a criminal case, and the burden of proof is upon the Government to establish to the satisfaction of the court sitting as a jury beyond a reasonable doubt that the law has been violated, that rule must be given full force and effect also.

"The verdict is accordingly not guilty."

600. Misbranding of Essence of Caroid. U. S. v. 10 Bottles of Essence of Caroid. Default decree of condemnation. Product ordered delivered to Food and Drug Administration for technical use. (F. D. C. No. 6258. Sample No. 87104-E.)

On November 21, 1941, the United States attorney for the District of Columbia filed a libel against 10 1-gallon cartons of Essence of Caroid at Washington, D. C., alleging that the article had been shipped by the American Ferment Co., Inc. from Buffalo, N. Y., on or about October 21, 1941; and charging that it was misbranded.

The article was alleged to be misbranded (1) in that the statement on the label, "1 Gal.," was false and misleading since the quantity of contents of the package was materially less than 1 gallon; and (2) in that the label failed to bear an accurate statement of the quantity of contents.

On December 22, 1941, no claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to the Food and Drug Administration for technical use.

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PRODUCTS

	N. J. No.		N. J. No.
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Adiron	567	Mineral oil	588
Alcohol, rubbing, compounds	573, 599	Miscellaneous drugs, fire-damaged	563
Alcoholism remedies	559, 584	Nature's Minerals	541-545
Ammonia, aromatic spirit	564	Newbro's Herpicide	586
Anise seed	561	New Food	574
Ayds Candy	592, 593	Niter, sweet spirit	564
Bekus Puddy	579	Orrine No. 1	584
Bio Vita Vitamin Oil	570	Pinolator inhaler and medicament	583
Bo-Go-Ha-Ma Mineral Springs Water	587	Pro-Gro Poultry Supplement	596
Bonita livers	560	Pumpkin seed	561
Breatheasy kits and inhalant	546	Quaker Puffed Wheat Sparkies	580
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and grippe tablets	553	Slend-R-Form Candy	594, 595
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Adde, Inc.:		Cash Davis Laboratories:	
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American Diet aids Co., Inc.:		Crawford's Ridia	577
Enrich and Ritamine	578	Curtis & Travis:	
American Ferment Co., Inc.:		miscellaneous drugs, fire-damaged	563
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Arner Co., Inc.:		DPS Formula No. 54	568
laxative cold tablets	547	Daughter, Dr. John Wilbur, Co.:	
special formula tablets	547	"Doctor's Daughter" Tablets	554
Associated Brands, Inc.:		Difco Laboratories:	
West Point Hair Tonic	585	Gyantrin	572
Beringer, Geo. M., Inc.:		Federal Cosmetic Sales Corporation:	
thiamin chloride B ₁	581	Waft-Surgical	590
Bioproducts, Inc.:		Floracube Co.:	
Bio Vita Vitamin Oil	570	Floracubes	552
Bloomhuff, C. F., and R. V.:		Fuller Co.:	
Robinson Spring Water	575	Ayds Candy	592
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¹ Contains an opinion of the court.

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FEDERAL SECURITY AGENCY

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

[Given pursuant to section 705 of the Food, Drug, and Cosmetic Act]

601-655

DRUGS AND DEVICES

The cases reported herewith were instituted in the United States district courts by the United States attorneys acting upon reports submitted by direction of the Federal Security Administrator.

WATSON B. MILLER, *Acting Administrator, Federal Security Agency.*

Washington, D. C., November 11, 1942.

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DRUGS SEIZED BECAUSE OF POTENTIAL DANGER TO HEALTH WHEN USED ACCORDING TO DIRECTIONS

601. Adulteration and misbranding of Bromo-Caps; misbranding of Rx S368957 Filled Capsules. U. S. v. 5 Drums of Rx 368957 Filled Capsules and 111 Display Cards and 214 Cartons of Bromo-Caps. Default decree of condemnation and destruction. (F. D. C. Nos. 4900 to 4902, incl. Sample Nos. 50246-E, 50247-E.)

This case was based on the interstate shipment of a quantity of acetanilid, aspirin, and caffeine capsules in drums, a portion of which had been repackaged and labeled "Original and Genuine Bromo-Caps." The repackaged capsules would have been dangerous to health when used according to the directions on the carton. The labeling of the repackaged capsules also overstated the acetanilid content by approximately 50 percent and it bore false and misleading claims. The labeling of both bulk and repackaged capsules failed to bear adequate directions for use and warning and satisfactory ingredient statements.

On June 13, 1941, the United States attorney for the District of Maryland filed a libel against 5 drums containing a total of 31,800 Rx S368957 Filled Capsules; and 111 display cards each containing 24 4-capsule-sized cartons and 2 12-capsule-sized cartons, and 202 4-capsule-sized cartons and 12 12-capsule-sized cartons of Bromo-Caps at Baltimore, Md., alleging that the articles had been shipped on or about April 11, 1941, by Parke, Davis & Co. from Detroit, Mich., and charging that a portion were adulterated and misbranded and that the remainder were misbranded.

Analyses of samples of the article showed that it consisted essentially of acetanilid (2.3 grains), aspirin (4.4 grains), and caffeine (3/4 grain) per capsule.