

injurious to any extent within the definition of an injury—harm, damage to users generally under the conditions of use prescribed in the labeling thereof, or are the directions so excellent and so positive, that no one could do damage to their eye by following the directions? If the Government has failed to satisfy you to that extent, bring in a verdict for the claimant. If on the other hand, you are satisfied that the Government has carried the burden and that here is an adulterated cosmetic that should be taken off the market under the law, then it is your duty to bring in a verdict for the Government. Your duty is plain. We are not concerned with anything else except this particular issue. We are protecting the people of the country against adulterated cosmetics where the labeling is not sufficient or the customary use is not sufficient, and at the same time we want every manufacturer to feel he has had a fair trial and that unless the Government proves its case by a preponderance of evidence it can go on manufacturing by reason of the verdict of the jury. Any exceptions or requests?"

Mr. PARKER. "Perfectly satisfactory, your honor."

Mr. HAYES. "I want to take exception to that part of your honor's charge to the effect that the Government's case is made out when it proves its case by a preponderance of evidence."

THE COURT. "Yes. All right."

Mr. HAYES. "And I want to take exception to all those parts of your honor's charge as to the extent of injury which may allow condemnation of the product."

THE COURT. "All right. Overruled."

Mr. HAYES. "With reference to the requests to charge, I don't want to take up the time of your honor before the jury here."

THE COURT. "Come on. Let us get along with it. I don't want to get into any argument."

Mr. HAYES. "I ask your honor to charge the jury that any use of this product under conditions and for purposes not reasonably prescribed in the directions cannot be considered."

THE COURT. "I shall not charge anything more than I have already charged. Your requests were all handed up before the summations in accordance with our rules and have been considered. I give you an exception for the failure to charge any of those I haven't charged."

Mr. HAYES. "Very well."

THE COURT. "You may retire and we will excuse our additional juror with thanks."

"You, Mr. Foreman, can have any of the exhibits. You can take them all with you if you want them or you can leave them here. Just suit yourselves. You had better consult with your fellow jurors and if you want them all the exhibits will go right with you."

On the same day, April 14, 1942, the jury returned a verdict for the claimant, and judgment was entered ordering the consolidated case dismissed and the product returned to the claimant.

**77. Adulteration and misbranding of Louise Norris Lash & Brow Coloring.**  
U. S. v. (Mrs.) Louise Norris (Louise Norris Co.). Plea of nolo contendere. Fine of \$650 and jail sentence of 1 year. Jail sentence suspended and defendant placed on probation for 3 years. (F. D. C. No. 5494. Sample Nos. 4570-E to 4574-E, incl., 11108-E, 15901-E, 16329-E, 26808-E to 26811-E, incl., 32037-E, 32038-E, 44931-E to 44933-E, incl.)

Examination of this product showed that it contained 2,5 toluylenediamine, or salts of 2,5 toluylenediamine, an uncertified coal-tar color.

On November 21, 1941, the United States attorney for the Western District of Missouri filed an information against (Mrs.) Louise Norris, trading as Louise Norris Co. at Kansas City, Mo., alleging shipment from on or about October 27, 1939, to on or about August 23, 1940, from the State of Missouri into the States of Arkansas, California, Colorado, Illinois, Kansas, Texas, and Washington of quantities of Louise Norris Lash & Brow Coloring that was adulterated and a portion of which was also misbranded.

The article was alleged to be adulterated (1) in that it contained a poisonous or deleterious substance, namely, 2,5 toluylenediamine, or salts of 2,5 toluylenediamine, which might have rendered it injurious to users under the conditions of use prescribed in the labeling and under such conditions of use as are customary or usual; and (2) in that it was not a hair dye and it contained a coal-tar color, namely, 2,5 toluylenediamine, or salts of 2,5 toluylenediamine, which said coal-tar color was other than one from a batch that had been certified in accordance with regulations as provided by law.

A portion of the article was alleged to be misbranded in that the statement, "This coloring known as Louise Norris Lash and Brow Coloring is now labeled in this manner to meet all requirements of law governing interstate commerce. \* \* \* Guarantee We guarantee this package to conform with all local, State and Federal regulations of the Food, Drug, and Cosmetic Act," appearing on the carton, were false and misleading since the article did not meet the requirements of all laws governing interstate commerce and it did not meet the requirements of the Federal Food, Drug, and Cosmetic Act.

On February 19, 1942, the defendant entered a plea of nolo contendere and the court imposed a fine of \$50 on each of the 13 counts with a jail sentence of 12 months on each count to run concurrently. The jail sentence was suspended, however, and the defendant was placed on probation for 3 years.

**78. Adulteration and misbranding of Mary Luckie Original Hair Tints. U. S. v. 25 Packages, 29 Packages, and 30 Packages of Mary Luckie Original Hair Tints. Default decrees of condemnation and destruction. (F. D. C. Nos. 5032, 5033. Sample Nos. 57521-E to 57524-E, incl.)**

This product contained paraphenylenediamine, a poisonous or deleterious ingredient which might have rendered it injurious to users under such conditions of use as are customary or usual. It was also falsely represented to be a hair tint.

On or about July 8, 1941, the United States attorney for the Eastern District of Arkansas filed libels against 55 packages of Mary Luckie Original Hair Tint (Jet Black) and 29 packages of Mary Luckie Original Hair Tint (Black), at Little Rock, Ark., alleging that the article had been shipped in interstate commerce on or about May 12 and 31, 1941 by the Marlu Co. from Kansas City, Mo.; and charging that it was adulterated and misbranded.

The article was alleged to be adulterated in that it bore or contained a poisonous or deleterious substance which might have rendered it injurious to users under such conditions of use as are customary or usual. It was alleged to be misbranded in that the designation "hair tint" was false and misleading since it was not a hair tint but was an eyelash and eyebrow dye.

On October 2, 1941, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

**79. Adulteration of Kix Kinks Hair Straiter. U. S. v. 3 Packages and 5 Packages of Kix Kinks Hair Straiter. Default decrees of condemnation and destruction. (F. D. C. Nos. 7903, 7904. Sample Nos. 77883-E, 77884-E.)**

This product contained sodium hydroxide.

On July 14, 1942, the United States attorney for the District of New Jersey filed libels against 8 packages of Kix Kinks Hair Straiter at Newark, N. J., alleging that the article had been shipped on or about June 19 and November 13, 1941, and April 26, 1942, by Dorosy, Inc., from New York, N. Y.; and charging that it was adulterated in that it contained a poisonous or deleterious substance, namely, sodium hydroxide which might have rendered it injurious to users under the conditions of use prescribed in the labeling or under such conditions of use as are customary or usual.

On September 10, 1942, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

**80. Adulteration and misbranding of Tartaroff. U. S. v. 11 Display Cards of Tartaroff. Default decree of condemnation and destruction. (F. D. C. No. 4810. Sample No. 29701-E.)**

This product contained citric acid, which might have rendered it injurious to users and it also contained an uncertified coal-tar color.

On May 21, 1941, the United States attorney for the Southern District of Indiana filed a libel against 11 display cards, each containing 13 bottles of Tartaroff, at Indianapolis, Ind., alleging that the article had been shipped in interstate commerce on or about March 22, 1941, by the Tartaroff Co. from Chicago, Ill.; and charging that it was adulterated and misbranded.

The article was alleged to be adulterated in that it contained a poisonous or deleterious substance, namely, citric acid, which might have rendered it injurious to users under the conditions of use prescribed in the labeling thereof or under such conditions of use as are customary or usual. It was alleged to be adulterated further in that it bore or contained a coal-tar color other than one from a batch which had been certified in accordance with regulations prescribed by law.