

United States District Court, Southern District of Ohio, Western Division

Civil No. 6273

UNITED STATES OF AMERICA v.

14 cases, more or less, of an article labeled in part "24 capsules * * * Lincocin"

CLAIM OF OWNER

The Upjohn Company, a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in Kalamazoo, Michigan, appears before this Court, intervening in this proceeding for the interest of itself as owner of the articles above described, and makes claim to the said articles which have been attached by the United States Marshal for this District under process of this Court at the instance of the United States of America, libellant;

And said claimant avers that it is the true and bona fide owner of the said articles and that no other person is the owner thereof; wherefore it prays to defend accordingly.

THE UPJOHN COMPANY,
By GERARD THOMAS,
Vice President.

AFFIDAVIT

STATE OF MICHIGAN
County of Kalamazoo, ss:

Gerard Thomas, being duly sworn, deposes and says that he is the Vice President of The Upjohn Company, the corporation which is described herein and which executed the foregoing claim; that he has authority to act on behalf of the corporation in this matter and that he signed said claim pursuant to said authority; that he has read said claim and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

GERARD THOMAS, *Vice President.*

Subscribed and sworn to before me this 2nd day of December, 1966.

HOWARD D. KALLEWARD, *Notary Public.*

My commission expires December 8, 1967.

PROOF OF SERVICE

A copy of the attached Claim of Owner and Affidavit of Gerard Thomas was delivered to the Office of Thomas R. Smith, Assistant United States Attorney, this 6th day of December 1966.

THOMAS S. CALDER.

HON. ROBERT M. DRAPER,
U.S. Attorney,
Cincinnati, Ohio.

DEAR SIR: There is at Cincinnati, in possession of The Upjohn Company, 4910 Para Drive (warehouse), an article of drug consisting of 14 cases, more or less, each containing 48 24-capsule bottles of an article labeled in part: (btl.) "24 capsules * * * Lincocin (lincomycin hydrochloride monhydrate) equiv. to 500 mg. lincomycin. * * * Caution: Federal Law * * * Usual Adult Dosage: 500 mg. three or four times daily * * * Lot No. WG969E6 * * * Expires May 1, 1969, * * * The Upjohn Co., Kalamazoo, Michigan." which were shipped, on or about October 4, 1966, by The Upjohn Company, 9171 Portage Road, Kalamazoo, Michigan, via Holland Motor Express.

No analysis has been made. It is assumed that the article contains the ingredients declared on its label and labeling.

The aforesaid article was misbranded when introduced into and while in interstate commerce, within the meaning of the Federal, Food, Drug, and Cosmetic, 21 U.S.C. 352(n) in that it is a prescription drug which is subject to certification and is distributed and offered for sale in the State of Ohio, and the advertisement for the drug appearing in the *Journal of the American Medical Association* for October 3, 1966, identified "C 1966 by The Upjohn Company J66-6375-2"