

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
Eighty-four 24-pound bags, more or less, of an)
article of food, labeled in part: (bag))
)
“*** KAYTEE Supreme Fortified Daily Blend)
COMPANION BIRD *** Grains and Seed)
*** Manufactured By KAYTEE Products, Inc.)
Chilton, WI *** USA *** Net WT 25 lb ***”,)
)
Two 6.6-pound bags, more or less, or an)
article of food, labeled in part: (bag))
)
“*** DICK VAN PATTEN’S *** Natural)
Balance ***ULTRA PREMIUM CAT FOOD)
*** NET WT. 6.6 LBS. ***”,)
)
and)
)
all other articles of food in any size and type)
of container, labeled or unlabeled (excluding)
metal and glass containers), that are located)
anywhere on the premises of PETCO)
ANIMAL SUPPLIES DISTRIBUTION)
CENTER, 3801 Rock Creek Boulevard, Joliet,)
Illinois, which are determined to have)
originated outside the State of Illinois based)
either on affixed labels bearing, among other)
things, the name and address of the)
manufacturer, packer, or distributor located)
outside the State of Illinois, or by other means,)
)
Defendants.)

VERIFIED COMPLAINT FOR FORFEITURE

The United States of America, by Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, for its complaint, states as follows:

1. The United States of America seeks seizure and condemnation of articles of food, as described in the caption, in accordance with the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 301 *et seq.*

2. In Joliet, Illinois, in the possession of PETCO Animal Supplies Distribution Center, 3801 Rock Creek Boulevard, or elsewhere within the jurisdiction of this court, there are articles of food, as described in the caption, which articles were shipped in interstate commerce from outside the State of Illinois.

3. Plaintiff brings this action *in rem*, pursuant to 21 U.S.C. § 334, to condemn and forfeit the defendant property. This court has subject-matter jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345 and under 21 U.S.C. § 334, which provides the court with jurisdiction over seizures brought under the Act.

4. This court has *in rem* jurisdiction under 21 U.S.C. § 334, because the defendants are located at PETCO Animal Supplies Distribution Center, 3801 Rock Creek Boulevard, Joliet, Illinois, within the jurisdiction of this court.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1395(b) and 21 U.S.C. § 334 (a)(1).

6. The defendant articles are adulterated while held for sale after shipment in interstate commerce, within the meaning of 21 U.S.C. § 342(a)(4), in that they have been held under insanitary conditions whereby they may have become contaminated with filth.

7. By reason of the foregoing, the articles are held illegally within the jurisdiction of this court and are liable to seizure and condemnation pursuant to 21 U.S.C. § 334.

8. The Act, at 21 U.S.C. § 321(f), defines food as “articles used for food or drink for man or other animals.” Pet food is subject to seizure under the Act if it is adulterated within the meaning of 21 U.S.C. § 342.

9. The Food and Drug Administration (FDA) conducted inspections of the PETCO Animal Supplies Distribution Center on April 2-24 and May 19-21, 2008. At the April inspection, FDA investigators observed evidence of widespread and active rodent and bird infestation in the building, including 26 live rodents, 7 dead rodents, rodent nesting material, over 30 live birds, and 1 dead bird on or around stored containers of pet food. Over 1,300 rodent excreta pellets were observed scattered throughout all areas of the warehouse, including on and around stored containers of pet food. The FDA investigators saw several containers of pet food which had been rodent-gnawed; these containers also contained rodent excreta pellets. The FDA investigators saw food-bagging with stains characteristic of rodent urine. The FDA investigators saw a bird tearing into a bag of dog food. The FDA investigators also saw live birds on and above susceptible containers of pet food and significant amounts of bird droppings in several areas of the warehouse. The FDA investigators also noted building defects, such as holes through exterior walls and gaps under doors, which serve as entryways into the building, as well as areas of debris outside of the warehouse, which serve as rodent harborage.

10. The FDA investigators discussed their observations with PETCO management on April 24, 2008. In a letter dated April 29, 2008, PETCO stated (through its Director, Ethics and

Compliance, Janet Scheiner), that it had “implemented immediate corrective measures and is actively pursuing permanent solutions in coordination with its pest control experts.”

11. FDA inspected the PETCO Animal Supplies Distribution Center again on May 19-21, 2008. This inspection confirmed a continuing, widespread, and active rodent and bird infestation, including sightings of live rodents, a nest holding 10 or more newborn mice, dead rodents, and birds on and around stored containers of pet food, over 900 rodent excreta pellets at many locations throughout the warehouse, and rodent defiled packages (gnaw holes, excreta pellets, and urine stains) on pet food that had been received at the facility after FDA’s April 2008 inspection. The FDA investigators saw live birds and bird droppings on and around containers of pet food and in various areas of the warehouse. Structural defects in the building and gaps under doors continued to serve as entryways for pests.

12. FDA laboratory analyses of samples collected during the April 2008 inspection confirmed the presence of rodent excreta pellets on containers of food articles, rodent urine stains on food bagging, and rodent-gnawed holes in bags.

WHEREFORE, the United States of America requests:

- a. that process issue against the articles;
- b. that all persons having any interest in the articles be cited to appear herein and answer the allegations of this complaint;
- c. that this court find that the articles identified in the caption are articles of food that are adulterated within the meaning of 21 U.S.C. § 342(a)(4) in that they have been held under insanitary conditions whereby they may have become contaminated with filth;
- d. that this court decree the condemnation and forfeiture of the articles;

- e. that the articles be disposed of as this court may direct pursuant to the provisions of the Act;
- f. that this court grant plaintiff the costs of this proceeding against claimants of such articles;
- g. that plaintiff have such other and further relief as the case may require.

Respectfully submitted,

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VERIFICATION

I have read the foregoing Verified Complaint for Forfeiture and verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

RICHARD E. HARRISON
Compliance Director
Chicago District Office
United States Food and Drug Administration

Executed on June 17, 2008