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# 21 U.S. Code § 334

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## Seizure

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### **(a) Grounds and jurisdiction**

(1) Any article of food, drug, or cosmetic that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 331(ll), 344, or 355 of this title, be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which the article is found. No libel for condemnation shall be instituted under this chapter, for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this chapter based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (A) when such misbranding has been the basis of a prior judgment in favor of the United States, in a criminal, injunction, or libel for condemnation proceeding under this chapter, or (B) when the Secretary has probable cause to believe from facts found, without hearing, by him or any officer or employee of the Department that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.

(2) The following shall be liable to be proceeded against at any time on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which they are found: (A) Any drug that is a counterfeit drug, (B) Any container of a counterfeit drug, (C) Any punch, die, plate, stone, labeling, container, or other thing used or designed for use in making a counterfeit drug or drugs, (D) Any adulterated or misbranded device, (E) Any adulterated or misbranded tobacco product, (F) Any device that is a counterfeit device, (G) Any container, packaging, or labeling of a counterfeit device, and (H) Any punch, die, plate, stone, labeling, container, or other thing used or designed for use in making a counterfeit device or devices.

- (3)
- (A) Except as provided in subparagraph (B), no libel for condemnation may be instituted under paragraph (1) or (2) against any food which—
- (i) is misbranded under section 343(a)(2) of this title because of its advertising, and
  - (ii) is being held for sale to the ultimate consumer in an establishment other than an establishment owned

or operated by a manufacturer, packer, or distributor of the food.

(B) A libel for condemnation may be instituted under paragraph (1) or (2) against a food described in subparagraph (A) if—

(i)

(I) the food's advertising which resulted in the food being misbranded under section 343(a)(2) of this title was disseminated in the establishment in which the food is being held for sale to the ultimate consumer,

(II) such advertising was disseminated by, or under the direction of, the owner or operator of such establishment, or

(III) all or part of the cost of such advertising was paid by such owner or operator; and

(ii) the owner or operator of such establishment used such advertising in the establishment to promote the sale of the food.

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