

# United States Department of Agriculture,

BUREAU OF CHEMISTRY.

C. L. ALSBERG, Chief of Bureau.

## SERVICE AND REGULATORY ANNOUNCEMENTS.

### SUPPLEMENT.

N. J. 6151-6200.

[Approved by the Acting Secretary of Agriculture, Washington, D. C., August 8, 1918.]

### NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

**6151. Alleged adulteration and misbranding of compound essence grape. U.S. \* \* \* v. Joseph L. Schider (Jos. L. Schider & Co.). Decision of the Supreme Court of the United States reversing judgment of the lower court which sustained a demurrer to the indictment. (F. & D. No. 7805. I. S. No. 12349-K.)**

On February 14, 1917, the grand jurors of the United States within and for the Southern District of New York, acting upon a report by the Secretary of Agriculture, upon presentment by the United States attorney for the district aforesaid, returned an indictment against Joseph L. Schider, trading as Jos. L. Schider & Co., New York, N. Y., charging shipment by said defendant, in violation of the Food and Drugs Act, on February 25, 1914, from the State of New York into the State of Virginia, of a quantity of an article labeled in part, "Compound Ess Grape, Jos. L. Schider & Co., 93-95 Maiden Lane, New York," which was alleged to have been adulterated and misbranded.

Analysis of the sample of the article by the Bureau of Chemistry of this department showed the following results:

Oil by volume (per cent).....13.5

This product is an alcoholic solution of essential oils, which appear to be amyl acetate and methyl-amido-ortho-benzoate. The precipitated oil has a strong blue fluorescence and formed a white sulphate compound in dry ether solution with sulphuric acid. The odor of a dilute solution of this sample suggests the flavor of grapes.

Adulteration of the article was charged in the indictment for the reason that an imitation grape essence, artificially prepared from alcohol, water, and synthetically produced imitation essential oils, had been mixed therewith so as to reduce and lower and injuriously affect its quality and strength, and had been wholly substituted for a true grape product, which the article purported to be.

Misbranding of the article was charged for the reason that the statement, "Ess Grape," appearing on the label, regarding the article and the ingredients and sub-

stances contained therein, was false and misleading in that it indicated that the article was a true product of the grape; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was a true product of the grape, whereas, in truth and in fact, it was not, but was an imitation grape essence, artificially prepared from alcohol, water, and synthetically produced imitation essential oils, and contained no product of the grape. Misbranding of the article was charged for the further reason that the label bore the statement, "Compound Ess Grape," regarding the ingredients and substances contained in the article, which statement was false and misleading in that it indicated that a true grape product was an ingredient and substance contained in the article, whereas, in truth and in fact, a true grape product was not an ingredient or substance contained therein, but the article consisted of an imitation grape essence, artificially prepared from alcohol, water, and synthetically produced imitation essential oils. Misbranding of the article was charged for the further reason that it purported to be a true product of the grape, whereas, in truth and in fact, it was an imitation thereof, artificially prepared from alcohol, water, and synthetically produced imitation essential oils, and the word, "imitation," was not stated on the bottle in which the article was offered for sale. It was further presented in the indictment that the article contained no added poisonous or deleterious ingredient.

On February 23, 1917, the defendant filed his demurrer to the indictment, and on February 24, 1917, the court sustained the demurrer.

On March 16, 1917, a petition for a writ of error to the Supreme Court of the United States was filed and thereafter allowed.

On April 15, 1918, the case having come on for final disposition before the Supreme Court of the United States, the judgment of the trial court in sustaining the demurrer was reversed and the cause remanded for further proceedings, as will more fully appear from the following decision of the court. Mr. Justice McReynolds delivered the opinion of the court.

An indictment containing six counts charged defendant, Schider, with violating the Food and Drugs Act of June 30, 1906 (34 Stat. 768), by delivering for shipment in interstate commerce food contained in a bottle plainly labeled as follows: "Compound Ess Grape Jos. L. Schider & Co. 93-95 Maiden Lane, New York."

Each count alleges the article was an imitation of grape essence artificially prepared from alcohol, water, and synthetically produced imitation oils, and contained no product of the grape nor any added poisonous or deleterious ingredient; and that the word, "imitation," nowhere appeared.

The first count further alleged that it was "unlawfully adulterated in that an imitation grape essence artificially prepared from alcohol, water, and synthetically produced imitation essential oils had been wholly substituted for a true grape product, which the article purported to be"; and the second that it was "unlawfully adulterated in that an imitation grape essence artificially prepared from alcohol, water, and synthetically produced imitation essential oils, had been mixed with the said article so as to reduce and lower and injuriously affect the quality and strength of the said article."

The third, fourth, fifth, and sixth counts, in varying ways, further alleged misbranding so as to deceive and mislead in that the label indicated a true grape product, whereas the article was not such but an imitation artificially prepared, one which contained nothing from grapes.

The trial court sustained a demurrer to each count upon the view that, properly construed, the Food and Drugs Act did not apply to facts stated.

Pertinent portions of the Act follow:

"SEC. 7. That for the purposes of this act an article shall be deemed to be adulterated \* \* \*

"First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

"Second. If any substance has been substituted wholly or in part for the article.

"SEC. 8. That the term 'misbranded,' as used herein, shall apply to all drugs, or articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in

any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

"That for the purposes of this act an article shall also be deemed to be misbranded \* \* \*

"First. If it be an imitation of or offered for sale under the distinctive name of another article.

"Second. If it be labeled or branded so as to deceive or mislead the purchaser, \* \* \*

"Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular; *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients, shall not be deemed to be adulterated or misbranded in the following cases \* \* \*

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word 'compound,' 'imitation,' or 'blend,' as the case may be, is plainly stated on the package in which it is offered for sale: \* \* \* (34 Stat., c. 3915, pp. 768, 770-771)."

The obvious and undisputed purpose and effect of the label was to declare the bottled article a compound essence of grape. In fact, it contained nothing from grapes and was a mere imitation.

Within the statute's general terms the article must be deemed adulterated since some other substance had been substituted wholly for the one indicated by the label; and, also, it was misbranded, for the label carried a false and misleading statement.

Defendant relies on the proviso in section 8 which declares articles of food shall not be deemed adulterated or misbranded if they are "labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word 'compound,' 'imitation,' or 'blend,' as the case may be, is plainly stated on the package in which it is offered for sale." But we are unable to conclude that by simply using "compound" upon his label a dishonest manufacturer exempts his wares from all inhibitions of the statute and obtains full license to befool the public. Such a construction would defeat the highly beneficent end which Congress had in view.

We have heretofore said: "The purpose of the act is to secure the purity of food and drugs and to inform purchasers of what they are buying. Its provisions are directed, to that purpose and must be construed to effect it." (*United States v. Antikamnia Co.* 231 U. S. 654, 665.) "The legislation, as against misbranding, intended to make it possible that the consumer should know that an article purchased was what it purported to be; that it might be bought for what it really was and not upon misrepresentations as to character and quality." (*United States v. Lexington Mill Co.*, 232 U. S. 399, 409. And see *United States v. Coca Cola Co.*, 241 U. S. 265, 277.)

The stuff put into commerce by defendant was an "imitation," and if so labeled purchasers would have had some notice. To call it "compound essence of grape" certainly did not suggest a mere imitation, but on the contrary falsely indicated that it contained something derived from grapes. (See *Frank v. United States*, 192 Fed. 864.) The statute enjoins truth; this label exhales deceit.

The trial court erred in sustaining the demurrer. Its judgment is reversed and the cause remanded for further proceedings in accordance with this opinion.

*Reversed and remanded.*

CARL VROOMAN,  
*Acting Secretary of Agriculture.*