

United States Department of Agriculture,

OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

NOTICE OF JUDGMENT NO. 82, FOOD AND DRUGS ACT.

MISBRANDING OF DRUG PREPARATIONS.

(MME. YALE'S SKIN FOOD, ETC.)

In accordance with the provisions of section 4 of the Food and Drugs Act of June 30, 1906, and of regulation 6 of the rules and regulations for the enforcement of the act, notice is given of the judgment of the court in case of the United States *v.* 85 dozen packages, more or less, of certain drug preparations known as "Mme. Yale's Excelsior Fruitcura," "Mme. Yale's Fertilizer Tablets," "Mme. Yale's Excelsior Hair Tonic," "Mme. Yale's Excelsior Complexion Bleach," "Mme. Yale's Antiseptic," "Mme. Yale's Blush of Youth," and "Mme. Yale's Skin Food," a proceeding of libel lately pending in the supreme court of the District of Columbia under the provisions of section 10 of the aforesaid act for seizure and condemnation of said preparations, wherein Maude Yale Bishop Wilson (Mme. M. Yale) of New York, N. Y., was claimant. The said packages of drug preparations were misbranded within the meaning of section 8 of the act, and had been shipped by the said claimant from New York, N. Y., to S. Kann Sons & Company, Washington, D. C. The character and misbranding of said preparations are more particularly described in the libel hereinafter set out.

On July 2, 1908, the United States attorney for the District of Columbia filed a libel in the above-stated court for the seizure and condemnation of the aforesaid drug preparations, which libel is in form and substance as follows:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA HOLDING A
DISTRICT COURT.

UNITED STATES OF AMERICA, <i>Libellant,</i>	}	No. 772, District docket.
<i>vs.</i>		
LEWIS KANN, SIGMUND KANN, AND SIMON Kann, partners trading under the firm name and style of S. Kann Sons & Com- pany.		

*To the Honorable Justice of the Supreme Court of the District of Columbia,
holding a district court:*

The libel of the United States of America, by Daniel W. Baker, its attorney in and for the district aforesaid, who in this case prosecuting in its behalf, respectfully represents as follows:

1. That this libel is filed by the United States of America in its own right, and prays the seizure for condemnation of certain articles of drugs contained in

eighty-five dozen packages, more or less, as hereinafter particularly set forth in accordance with the act of Congress in such case made and provided, approved June 30, 1906.

2. Your libellant represents to the court that in the city of Washington, District of Columbia, and within the jurisdiction of this honorable court, and within the premises of one Lewis Kann, one Sigmund Kann, and one Simon Kann, partners trading under the firm name and style of S. Kann Sons and Company, to wit, a certain warehouse situated at the corner of Eighth and D streets northwest, are certain articles of drugs being owned by them or in their possession, and being of the particular description following:

Fifteen dozen packages of Madam Yale's Skin Food, eight dozen packages of Madam Yale's Fruitcura, eight dozen packages of Madam Yale's Fertilizer Tablets, thirty-six dozen packages of Madam Yale's Excelsior Hair Tonic, three dozen packages of Madam Yale's Excelsior Complexion Bleach, fourteen packages of Madam Yale's Antiseptic, and one dozen packages of Mme. Yale's Blush of Youth.

3. Your libellant represents that the said fifteen dozen packages of Madam Yale's Skin Food are illegally held as aforesaid within the jurisdiction of this honorable court, and that the said articles are misbranded in violation of the said act of Congress of June 30, 1906, and are liable to condemnation and confiscation as provided therein, for the reason that said packages and labels of said drug bear certain statements regarding said drug and the ingredients and substances contained therein which are false and misleading; and that among the said false and misleading statements are the following, that is to say:

"A marvelous, nourishing product that feeds through the pores of the skin. Madam Yale's Skin Food can not be duplicated as it is compounded by Madam Yale personally and protected by a chemical secret. The Excelsior Skin Food is a pioneer and the only genuine Skin Food in the world. It is absolutely guaranteed to remove wrinkles and every trace of age from the face of all who use it. It is soothing in its effect on the skin, healing as a magic balm, and fattening in its qualities;"

and that the said last-mentioned statement is false and misleading in this, that the said drug is simply an ordinary ointment.

4. Your libellant further represents that the said eight dozen packages, more or less, branded "Madam Yale's Fruitcura," are illegally held as aforesaid within the jurisdiction of this honorable court, and that the said articles are misbranded in violation of the said act of Congress aforesaid, and liable to condemnation and confiscation as provided therein, for the reason that the said packages and labels of said drug bear certain statements regarding said drug and the substances contained therein which are false and misleading, and that among the said false and misleading statements are the following, that is to say:

"Fruitcura is primarily 'Woman's Tonic,' a cure for every ill to which she is sexually heir from Infancy to Old Age. It is Nature's prompt omnipotent Restorative—a Specific for the Generative Organs—Fruitcura cures the so-called 'Incurable.' It is an Elixir of Life—It prevents and cures Prolapsus or Falling of the Womb and all Displacements of Womb or Ovaries;"

and that the said last-mentioned statements are false and misleading in this, that the said drug is not a cure for every ill to which woman is sexually heir, and is not a specific for the generative organs, and does not cure persons afflicted with incurable diseases, and does not cure prolapsus or falling of the womb, or any displacements of the womb or ovaries.

5. Your libellant further represents that the said eight dozen packages, more or less, branded "Mme. Yale's Fertilizer Tablets," are illegally held as aforesaid within the jurisdiction of this honorable court, and that the said articles are

misbranded in violation of the said act of Congress aforesaid, and are liable to condemnation and confiscation as provided therein, for the reason that the said packages and labels of said drug bear certain statements regarding the said drug and the ingredients and substances contained therein which are false and misleading; and that among the said false and misleading statements are the following, that is to say: That the said "Fertilizer Tablets" are "A specific for curing Flatulency and all Gastric troubles;" and are "A cure for Obesity." And said last-mentioned statements are false and misleading in this, that the said last-mentioned drug is not a specific for curing flatulency and all gastric troubles, and is not a cure for obesity.

6. Your libellant further represents that the said thirty-six dozen packages, more or less, branded "Mme. Yale's Excelsior Hair Tonic," are illegally held as aforesaid within the jurisdiction of this honorable court, and that the said articles are misbranded in violation of the act of Congress aforesaid, and are liable to condemnation and confiscation as provided therein, for the reason that the said packages and labels of said drug bear certain statements regarding the said drug which are false and misleading, and that among the said false and misleading statements are the following, that is to say:

"It stops hair falling, cures and prevents Dandruff and all Scalp Diseases, and overcomes any hereditary tendency to Baldness or Grayness;" and that said last-mentioned statements are false and misleading in this, that the said last-mentioned drug does not stop the falling of hair and does not cure and prevent dandruff and all scalp diseases, and does not overcome any hereditary tendency to baldness or grayness.

7. Your libellant further represents that the said three dozen packages, more or less, branded "Mme. Yale's Excelsior Complexion Bleach," are illegally held as aforesaid within the jurisdiction of this honorable court, and are misbranded in violation of the said act of Congress aforesaid, and are liable to condemnation and confiscation as provided therein, for the reason that the packages and labels of said drug bear certain statements regarding the said drug and the ingredients and substances contained therein which are false and misleading, and that among the said false and misleading statements are the following, that is to say: That the said last-mentioned drug "removes moth patches, and all skin discoloration," and "creates natural beauty;" and the statement following, that is to say:

"It purifies the entire skin, penetrating its remotest recesses—invigorates nerves, muscles, and ligaments—makes the flesh firm and searches out and expels every impurity. Its compound is a chemical secret known only to Madame Yale;"

and that the said last-mentioned statements are false and misleading in this, that the said last-mentioned drug does not remove moth patches and all skin discoloration, and does not create natural beauty, and does not purify the entire skin, and does not invigorate the nerves, muscles, and ligaments, and does not make the flesh firm, and does not search out or expel any impurity, nor is the compound of said drug a chemical secret known only to Madame Yale, but the said drug consists only of a solution of borax.

8. Your libellant further represents that the statements concerning the ingredients and substances which are contained on the aforesaid label are false and misleading, and the aforesaid drug is therefore misbranded in violation of section 8 of the act approved June 30, 1906.

9. Your libellant further represents that there is also within the premises of the said Lewis Kann, the said Sigmund Kann, and the said Simon Kann, partners trading under the firm name and style of S. Kann Sons and Company, a certain other shipment of certain drugs contained in fourteen dozen packages,

twelve dozen of a small size and two dozen of a large size, each bearing the following label: "Mme. Yale's Antiseptic." In each of said packages is contained a circular bearing the following statements concerning the contents of the said packages:

"Yale's Antiseptic used in the bath is also a sure cure and preventive of Prickly Heat, Nettle-rash, Eczema, and all diseases of the skin and scalp. It is a perfect Disinfectant, Deodorant, Germicide, Prophylactic and Antiseptic, destructive of all disease germs, bacilli and all bacteria of micro-organisms, yet it is 'non-toxic'—Sure preventive of typhoid fever."

Your libellant represents that the said statements contained as aforesaid on the circular accompanying each package aforesaid, are false and misleading, and accredit to the said drug properties and virtues not belonging thereto, and in an analysis of the said drug made in the Bureau of Chemistry of the Department of Agriculture, it is found that the said statements are wholly false and misleading and in violation of the aforesaid Food and Drugs Act of June 30, 1906.

10. Your libellant further represents that there is also contained in the aforesaid premises of the said Lewis Kann, the said Sigmund Kann, and the said Simon Kann, partners as aforesaid trading under the firm name and style of S. Kann Sons and Company, a certain other shipment, being one dozen packages of "Mme. Yale's Blush of Youth." On each of these said packages is a label bearing the following statements:

"Blush of youth is refreshing as concentrated dew, pure as purity—It overcomes all inactivity and imperfection of the skin and underlying structure; spiritualizes the expression, and gives countenance the glow, luster and beauty of Childhood, and preserves the morning of life indefinitely."

Your libellant represents that an analysis of this preparation contained in the aforesaid packages shows that no such properties or virtues are possessed by the aforesaid drug, and that the statements made on the label are false and misleading, and that the said packages are accordingly misbranded in violation of the Food and Drugs Act of June 30, 1906.

11. Your libellant further represents that all of the aforesaid packages branded "Excelsior Skin Food," "Madame Yale's Fruitcura, Woman's Tonic," "Mme. Yale's Fertilizer Tablets," "Mme. Yale's Excelsior Hair Tonic, The Great Hair Grower," "Mme. Yale's Excelsior Complexion Bleach," "Mme. Yale's Antiseptic," and "Mme. Yale's Blush of Youth," contained in the aforesaid shipment, and specifically above set out, are drugs which have been transported from the city and State of New York to the District of Columbia, and so having been transported, remain unsold and in the original unbroken packages, and are now in the District of Columbia, and are about to be sold or offered for sale in the said District of Columbia and in violation of the aforesaid Food and Drugs Act approved June 30, 1906. The same are illegally held within the jurisdiction of this honorable court, and are liable to seizure, condemnation, and confiscation as provided in the said act.

Wherefore, in consideration of the premises, your libellant prays:

1. That the aforesaid shipment containing fifteen dozen packages of "Madame Yale's Skin Food," eight dozen packages of "Madame Yale's Fruitcura, Woman's Tonic," two dozen large-size and six dozen small-size "Mme. Yale's Fertilizer Tablets," twenty-four dozen small-size and twelve large-size packages of "Mme. Yale's Excelsior Hair Tonic, The Great Hair Grower," three dozen packages of "Mme. Yale's Excelsior Complexion Bleach," twelve dozen small-size and two dozen large-size packages of "Mme. Yale's Antiseptic," and one dozen packages of "Mme. Yale's Blush of Youth," so misbranded as aforesaid, be proceeded against and seized for condemnation in accordance with the provisions of the said act of Congress approved June 30, 1906; and that to this end this

honorable court may order to issue a process of attachment in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, so far as is applicable in this case, and that the said Lewis Kann, the said Sigmund Kann, and the said Simon Kann, partners as aforesaid trading under the firm name and style of S. Kann Sons and Company, and all other persons having or pretending to have any right, title, interest, or claim in or to the said shipment specifically set out heretofore herein, or any packages contained therein, may be cited to appear herein and answer all and singular the premises aforesaid; and that if the said parties or any others who are interested herein be returned not to be found, that they may be proceeded against by process of publication in manner provided for by law.

2. That by a proper order this honorable court may adjudge and decree that the said shipment containing all of the packages aforesaid, and each and every one of said packages, are misbranded as claimed in this libel, and accordingly decree that the said packages and all of them be condemned at the suit of your libellant, and decree that the same, if not deleterious, shall be disposed of by sale, under such terms and conditions as to this honorable court may seem proper, and that the proceeds thereof, less legal costs, and charges, may be ordered to be paid into the Treasury of the United States, and that if the contents of said packages be deleterious and not subject to sale, that the said contents be then ordered to be destroyed, and that the costs of these proceedings be taxed against the parties found to be the owners of the said packages or the holders of the same within the jurisdiction of this honorable court.

3. And should the said packages be sold and the proceeds thereof be not sufficient to satisfy the costs in this case, that this honorable court may pass a judgment against the parties liable in the premises for the balance of the said costs so unsatisfied; and that this honorable court may pass all and such other orders, decrees and judgments as may be necessary in the premises.

4. And that your libellant may have such other and further relief as the exigencies of the case may require.

DANIEL W. BAKER,
United States Attorney, D. C.
 by STUART MCNAMARA,
Asst. U. S. Atty.

The aforesaid claimant having set up her title to the said drug preparations and having failed to answer the aforesaid libel and the case having come on for final hearing on the 9th day of February, 1909, upon motion of the United States attorney therefor, the court rendered its decree in substance and in form as follows:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA HOLDING A
 DISTRICT COURT.

UNITED STATES OF AMERICA, <i>Libellant,</i> <i>vs.</i> LEWIS KANN, SIGMUND KANN, AND SIMON Kann, partners trading under the firm name and style of S. Kann Sons and Company.	}	No. 772, District docket.
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DECREE OF CONDEMNATION.

Upon motion of the United States of America for judgment of condemnation of the articles seized herein, and it appearing to the court that upon the libel

filed herein July 2, 1908, a warrant of arrest was duly issued, under which the marshal of the United States for the District of Columbia has seized fifteen dozen packages of Madam Yale's Skin Food, eight dozen packages of Madam Yale's Fruitcura, eight dozen packages of Madam Yale's Fertilizer Tablets, thirty-six dozen packages of Madam Yale's Hair Tonic, three dozen packages of Madam Yale's Antiseptic, and one dozen packages of Madam Yale's Blush of Youth, which are inventoried as of the value of ninety-eight dollars (\$98.00) as shown by the return of the marshal filed herein, the same being the packages and articles fully described in the said libel and alleged therein to be misbranded by the labels and statements upon said packages and articles set forth in said libel; and it appearing to the court that proper notice and citation has been served upon the respondents, and that the claimant of record has appeared herein through her attorneys, Messrs. Wolf and Cohen, and that no answer has been filed to the libel within the time prescribed, and no objection being signified to the court, it is this ninth day of February, A. D. 1909,

Adjudged, ordered, and decreed, that the aforesaid packages containing the said articles above mentioned, seized by the marshal herein as aforesaid, and now in his custody, be, and they hereby are, declared to be misbranded by the use of the particular labels and statements upon the said articles and packages described in the said libel, in violation of the Food and Drugs Act approved June 30, 1906.

It is further adjudged, that the claimant of record herein pay the costs of this proceeding, and that the said articles contained in the said packages seized by the marshal as aforesaid be disposed of by sale under such terms and conditions as are not in violation of the Food and Drugs Act approved June 30, 1906.

Provided, that upon the said claimant of record paying the costs of the proceedings and executing and delivering to the said libellant a proper and sufficient bond in the penal sum of five hundred (\$500.00) dollars, conditioned that the said packages and the said articles so seized as aforesaid and the contents thereof shall not be sold or otherwise disposed of contrary to the provisions of the Food and Drugs Act approved June 30, 1906, the said marshal shall deliver the aforesaid packages to the said claimant in lieu of such disposition by sale as aforesaid.

By the court.

THOS. H. ANDERSON, *Justice.*

The facts in the case were as follows:

On or about June 30, 1908, an inspector of the Department of Agriculture found in the store of S. Kann Sons & Company, in Washington, D. C., a quantity of drug preparations which had been shipped to the said S. Kann Sons & Company, from New York, N. Y., on June 26 by Maude Yale Bishop Wilson. The consignment comprised seven distinct preparations labeled as hereinbefore stated in the libel filed in the case. Samples of the said several preparations were obtained by the Department of Agriculture and subjected to analyses in the Bureau of Chemistry in said Department.

The analysis of the preparation labeled "Mme. Yale's Excelsior Skin Food" disclosed that it consisted of 76.5 per cent of vaselin, which was mixed with fixed oil or fat and zinc oxid, colored with a pink dye, and perfumed.

The analysis of the preparation labeled "Mme. Yale's Excelsior Fruitcura" disclosed that it consisted of 76.97 per cent of volatile mat-

ter (largely water with 16.66 per cent of alcohol by volume), 29.71 per cent of sugar, and small quantities of plant drugs.

The analysis of the preparation labeled "Mme. Yale's Fertilizer Tablets" disclosed that the tablets were very largely composed of charcoal, compounded with potassium bitartrate and sugar.

The analysis of the preparation labeled "Mme. Yale's Excelsior Hair Tonic" disclosed that it consisted of 15.56 per cent of alcohol by weight, 82 per cent of water, and small amounts of glycerin, perfumed with bergamot oil.

The analysis of the preparation labeled "Mme. Yale's Excelsior Complexion Bleach" disclosed that it was mainly a saturated solution of borax in orange flower water.

The analysis of the preparation labeled "Mme. Yale's Antiseptic" disclosed that it consisted of 97.6 per cent of volatile matter (16.96 per cent of alcohol by weight, 4 per cent of formaldehyde, and water), 2.37 per cent of boric acid, and aromatics.

The analysis of the preparation labeled "Mme. Yale's Blush of Youth" disclosed that it consisted of 56.15 per cent of volatile matter (6.30 per cent of alcohol by weight and 49.85 per cent of water colored with a coal tar dye and perfumed), and about 43.85 per cent of glycerin.

By comparison of the analyses with the statements on the labels and circulars inclosed with the several preparations, it was apparent that these statements were false, misleading, and deceptive, and the preparations misbranded within the meaning of section 8 of the Food and Drugs Act of June 30, 1906.

On July 1, 1908, the Secretary of Agriculture reported the aforesaid facts to the United States attorney for the District of Columbia, who forthwith filed a libel for the seizure and condemnation of the goods with the result hereinbefore stated.

F. L. DUNLAP,
GEO. P. MCCABE,
Board of Food and Drug Inspection.

Approved:

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 16, 1909.*