

"18. Added tap water and solids of sugars derived from corn syrup and sugar are contained in Leader Brand Strawberry, Peach and Apricot Fruit Spreads, which ingredients increase their bulk and weight and make these articles appear to the ordinary consumer better and of greater value than they are.

CONCLUSIONS OF LAW

"1. The Court has jurisdiction of the parties and the subject matter of this case under the provisions of the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. 301, et seq.

"2. The phrase 'purports to be' is not defined and is used in the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. 343 (g), in its usual and ordinary sense; that is, the phrase includes what the object appears to be, gives or conveys the impression of being, and is accepted as by the ordinary consumer under ordinary conditions of purchase.

"3. Truthful labeling is relevant but not the controlling factor in determining whether an article 'purports' to be, or is represented as a food for which a definition and standard of identity has been promulgated under the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. 341.

"4. The standard of identity for a food may not be avoided merely by designating a food which purports to be or is represented as a standardized food by a name other than that set out in the standard of identity.

"5. The general appearance, color, consistency, and mode of packaging, distribution and marketing, manner of display on retail grocery store shelves, and labeling of an article of food may be such that it purports to be, or is represented as an article of food for which a definition and standard of identity has been promulgated even though none of these acts taken singly and apart from the general scheme would cause such deception.

"6. An article of food may be deemed misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. 343 (g), because it purports to be or is represented as a food for which definitions and standards of identity have been promulgated without regard to whether the manufacturer intended it to simulate or be represented as an article of food for which a definition and standard of identity has been promulgated.

"7. The articles of food seized under the libel here involved are misbranded within the meaning of 21 U. S. C. 343 (g) in that they purport to be or are represented as strawberry jam, peach jam or apricot jam, foods for which definitions and standards of identity have been prescribed by regulations and they fail to comply with such standards.

"8. The articles of food seized under the libel here involved are adulterated within the meaning of 21 U. S. C. 342 (b) (4) in that water, sugar and corn syrup have been added thereto and packed therewith so as to increase their bulk and weight and make them appear better and of greater value than they are.

"9. The Government is entitled to a decree of condemnation."

On November 14, 1950, a decree of condemnation and forfeiture was entered, and the court ordered that the product be delivered to charitable institutions. On December 11, 1950, the claimant filed a notice of appeal to the Circuit Court of Appeals for the Eighth Circuit; however, on April 2, 1951, on claimant's motion, an order was filed dismissing the appeal.

17276. Adulteration of strawberry preserves. U. S. v. 41 Cases * * * (and 1 other seizure action). (F. D. C. No. 30430. Sample No. 25024-L.)

LIBELS FILED: February 7, 1951, Eastern District of Pennsylvania.

ALLEGED SHIPMENT: On or about October 7, 1950, by Baumer Foods, Inc., from New Orleans, La.

PRODUCT: 141 cases, each containing 24 1-pound jars, of strawberry preserves at Philadelphia, Pa.

LABEL, IN PART: (Jar) "Crystal Brand Pure Strawberry Preserves."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a decomposed substance by reason of the presence of decomposed strawberry material.

DISPOSITION: April 16, 1951. Default decrees of condemnation and destruction.

17277. Adulteration and misbranding of frozen orange drink base. U. S. v. 300 Cases * * *. (F. D. C. No. 29310. Sample Nos. 78513-K, 78514-K.)

LIBEL FILED: May 18, 1950, Western District of Washington.

ALLEGED SHIPMENT: On or about April 7, 1950, by the Orange King Products of California, Inc., from Los Angeles, Calif.

PRODUCT: 300 cases, each containing 48 6-ounce cans, of frozen orange drink base at Seattle, Wash.

LABEL, IN PART: (Can) "Orange King Concentrate."

NATURE OF CHARGE: Adulteration, Section 402 (b) (4), the product consisted of a mixture of orange juice and concentrated orange juice to which sugar and citric acid had been added and with which yellow coal-tar dyes had been mixed, which substances so added and so mixed to the product increased its bulk and made the product appear to be better and of greater value than it was, namely, an article that contained substantially more orange juice than was actually present.

Misbranding, Section 403 (a), the statements on the label "Orange King Concentrate A Fresh Frozen Orange Drink Base * * * A perfected blend of fresh orange juice and concentrated fresh orange juice with sweetness and acid balanced by sugar and fruit citric acid. * * * Contents Makes 1 $\frac{1}{4}$ Pints * * * A Natural Source of Vitamin 'C' * * * Empty can into bowl or pitcher. Add two full cans of water to concentrate * * *," together with the vignette on the label showing an orange and orange leaves and a glass containing an orange-colored beverage, were false and misleading in that they represented and suggested that the article was a concentrated orange juice which, when diluted as directed, would make reconstituted orange juice with the vitamin C content and the other nutritional properties of orange juice, whereas the article, when diluted as directed, would make a beverage containing the equivalent of only approximately 35 percent of orange juice. The labeling was further misleading in that it failed to reveal that the product, when diluted as directed, would contain only about 35 percent of orange juice, which fact was material in the light of the labeling statements and the general design of the label which was used on the 6-ounce-size cans in which the product was packed and intended to be displayed and stored in frozen food compartments in retail outlets in juxtaposition or in close placement to frozen concentrated orange juice, which, when diluted in accordance with the directions, would make reconstituted orange juice. Further misbranding, Section 403 (a), the label statement "Makes 1 $\frac{1}{4}$ Pints" was false and misleading as applied to an article which, when diluted, would make only 1 $\frac{1}{8}$ pints.

DISPOSITION: March 19, 1951. Orange King Products of California, Inc., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released to the claimant under bond for relabeling under the supervision of the Food and Drug Administration.