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Imitation Food under the Food, Drug and Cosmetic Act

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IMITATION FOOD UNDER THE FOOD, DRUG, AND COSMETIC ACT

Alleging that 62 cases of fruit jam were misbranded under the Federal Food, Drug, and Cosmetic Act, the United States, in a libel action, sought seizure and condemnation since the product did not comply with the "definition and standard of identity" promulgated by the Federal Security Administrator. The jam was unequivocally labeled "imitation," but it did not fall within the Administrator's definition for fruit jam because it contained 25% fruit and 20% pectin, a gelatinized solution consisting largely of water, while the regulations specified that a fruit jam must contain not less than 45% fruit ingredient. The product was nutritious, smelled and tasted like standard jam and was less expensive. The defendant, a Colorado firm that had shipped the jam in interstate commerce, maintained that 21 U.S.C.A. 343 (c) permits the marketing of an imitation food which is labeled as such. The trial court ordered the libel dismissed but on appeal the Circuit Court of Appeals, in a two-to-one decision, reversed the trial court with instructions to enter an order of condemnation.[1] The Supreme Court granted certiorari. *Held,* reversed.[2] It is not the intention of Congress to prohibit an imitation of another food, which is a substandard product but yet wholesome, and clearly labeled "imitation." *62 Cases, More or Less, Each Containing Six Jars of Jam et al. v. United States,* 340 U.S. 503, 71 S.Ct. 515, 95 L.Ed. 443 (1951).

The Act of 1906 declared a food to be misbranded "if it be an imitation of . . . another article, unless it is plainly labeled as an imitation."[3] This "distinctive name" proviso excepted mixtures which might be known as articles of food under their own distinctive names and not as an imitation of another article. The government had attempted condemnation of misbranded articles because of the failure of labels to bear the word "imitation," but such efforts were not generally satisfactory.[4] The Act was interpreted as protecting the debased and cheapened foods, therefore the government felt a more effective protection from substitute products was necessary. The result was the Act of 1938 in which the loophole of the "distinctive name" proviso was sought to be closed. A "definition and standard of identity" was necessary in order that food might have a legal

1. United States v. 62 Cases, More or Less, Containing Six Jars of Jam, etc., 183 F.(2d) 1014 (10th Cir. 1950).
2. 62 Cases, More or Less, Each Containing Six Jars of Jam et al. v. United States, 340 U.S. 593, 71 S.Ct. 515, 95 L. Ed. 443 (1951). Known as the "Jam Decision." Majority opinion by Mr. Justice Frankfurter. Mrs. Justice Douglas dissented. Mr. Justice Black concurring in the dissent, on the ground that the result reached by the court may be sound by legislative standards but that "the legal standards which govern us make the process of reaching that result tortuous to say the least."
3. Food, Drug and Cosmetic Act of 1938, 52 Stat. 1040, 21 U.S.C. 301 et seq.
4. United States v. One Car Load of Corno Horse and Mule Feed, 188 F. 453 (M.D. Ala. 1911); United States v. Five Cases of Champagne, 205 F. 817 (N.D. N.Y. 1913); United States v. Schider, 246 U.S. 519, 38 S.Ct. 369, 62 L.Ed 863 (1918); United States v. Ten Cases, More or Less, Bred Spred, Etc., et al., 49 F.(2d) 87 (8th Cir. 1931).

basis upon which to be judged.[5] When the article was produced and sold in conformity with the standard, the consumer could rely on the quality of the article and this furthered the Congressional intention of protecting those who are "largely beyond self-protection."[6] In instances in which the Administrator had designed a definition and standard for a food, that regulation must be strictly complied with,[7] and labeling will not prevent a violation though it be truthful and contain a full disclosure of the contents.[8]

The important question to be decided by the court is whether the food in question purports to be or is represented as the food for which a standard has been established.[9] Where the Administrator had established such a standard for both "farina" and "enriched farina," the product sold, "Quaker Farina Wheat Cereal Enriched by the Sunshine Vitamin," was not "farina" because of the inclusion of vitamin D and was not "enriched farina" since it did not contain Vitamins B_1, riboflavin, niacin and iron.[10] In the Farina case the court held that once the standard is prescribed, a food cannot be shipped in interstate commerce unless it is composed of the required ingredients. This rule has been subsequently applied.[11] In the Jam case, the government maintained that the Farina case was controlling since the nature of the product compared closely to that for which the standard and identity was prescribed and the labeling resulted in the conclusion that the product purported to be jam as defined by the standard. The Farina case, however, was distinguished by the court in that although the "farina" did not have the standard ingredients, it purported to be a standardized food and the court therefore did not consider the legality of "imitation" as such. The court said that its concern was whether the article sold as "Delicious Brand Imitation Jam" was deemed to be misbranded as an imitation of another food, or if it purported to be a food for which a standard and identity had been prescribed. The jam was unequivocally labeled "imitation" and possessed characteristics of jam so that it was an imitation within the statute, but did not purport to be a jam for which a definition and standard of identity had been established.[12] Thus the effort on the part of the government to obtain a judicial determination which would have prevented an imitation of any food from being sold

5. Kleinfeld and Dunn, Federal Food, Drug, and Cosmetic Act, 1938-1949, p. 245.
6. United States v. Antikamnia Chemical Co., 231 U.S. 654, 34 S.Ct. 222, 58 L.Ed. 419 (1914); United States v. Dotterweich, 320 U.S. 277, 64 S.Ct. 134, 88 L.Ed. 48 (1943).
7. Libby, McNeil and Libby v. United States, 148 F.(2d) 71 (2d Cir. 1945).
8. Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 63 S. Ct. 589, 87 L.Ed 724 (1943).
9. 62 Cases, More or Less, Each Containing Six Jars of Jam et al. v. United States, 340 U.S. 595, 71 S.Ct. 517, 95 L.Ed. 445 (1951).
10. Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 63 S.Ct. 589, 87 L.Ed. 724 (1943).
11. Libby, McNeil and Libby v. United States, 148 F.(2d) 71 (2d Cir. 1945); United States v. 30 Cases, More or Less, Leader Brand Strawberry Fruit Spread, 93 F. Supp. 764 (S.D. Iowa 1950); United States v. 75 Cases, More or Less, Each Containing 24 Jars of Peanut Butter, 146 F.(2d) 124, Cert. Denied, 325 U.S. 856, 65 S.Ct. 1183, 89 L.Ed. 1976 (1945).
12. 62 Cases, More or Less v. United States, 340 U.S. 593, 71 S.Ct. 515, 95 L.Ed. 443 (1951).

when a standard had been established for that product,[13] was rejected when the court stated that nothing could be legally jam unless it contained the specified ingredients and hence the article here in question is not jam, but "imitation jam." Congress did not intend that a food product which is wholesome be withheld from consumers merely because it is an imitation. The word "imitation," the court said, is not to be given an "esoteric" meaning[14] but is to be left to the understanding of ordinary English speech, that is, a less expensive but not debased food which is used as a substitute.

An imitation food, labeled as such, will not be condemned as misbranded, but if that food is represented to be a standard article, shipped in interstate commerce or held for shipment in interstate commerce, it will be condemned as misbranded. The decision thus determines the disposition of foods that contain a smaller quantity of expensive ingredients. What the result may be upon foods which simulate the standard product, but which contain completely different ingredients, is a question yet to be decided. However, the economy and importance to the consumer of being able to purchase less expensive and yet wholesome imitation food is evident at a time when the cost of living continues to rise.

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ACCORD AND SATISFACTION UNDER POWER OF SALE MORTGAGE

Defendant gave the bank a chattel mortgage on a truck. The mortgage provided that in case of default the bank was to have the right to immediate possession and power of sale according to law. Default occurred and the mortgagor, defendant, delivered the certificate of title to the cashier of the bank, stating that he wished to be relieved of all responsibility. The cashier accepted the certificate of title and said, "All right." The bank sued to recover a judgment on the note and to foreclose the mortgage. *Held,* that if the delivery of the certificate of title did constitute a constructive delivery of the truck, yet, it did not give the bank any right which it did not already have by its power of sale mortgage, therefore, there was not any consideration to support an accord and satisfaction as claimed by the defendant. *Casper National Bank v. Woodin,* 232 P. (2d) 706 (Wyo. 1951).

It is submitted that the right decision was reached to the effect that there was no accord and satisfaction, not, however, because the delivery

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13. Comment, 37 Virginia L.R. 755 (1951).
14. 62 Cases, More or Less v. United States, 340 U.S. 593, 71 S.Ct. 515, 95 L.Ed. 443 (1951).