

United States Department of Agriculture,
OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

NOTICE OF JUDGMENT NO. 3, FOOD AND DRUGS ACT.

MISBRANDING OF FLOUR.

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 that on the 23d day of January, 1908, in the United States District Court for the Western District of New York, the United States of America being plaintiff and the Birkett Mills, a corporation located and doing business at Penn Yan, N. Y., defendant, in a criminal proceeding on information filed by the United States Attorney, a copy of which is hereinbelow given, charging a violation of section 2 of the Food and Drugs Act of June 30, 1906, in shipping and delivering for shipment into interstate commerce a misbranded flour, the said defendant having been duly arraigned, entered a plea of guilty and the Court, in its discretion, suspended sentence.

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA, PLAINTIFF, <i>against</i> THE BIRKETT MILLS, DEFENDANT.	}	Information.
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BE IT REMEMBERED, That Lyman M. Bass, Attorney of the United States of America, for the Western District of New York, who for the said United States in this behalf prosecutes, in his own person, comes here into the District Court of the said United States of America for the District aforesaid on this 23rd day of January, 1908, and for the said United States of America gives the Court here to understand and be informed that one The Birkett Mills, a corporation organized and existing under and by virtue of the laws of the State of New York, with its place of business at Penn Yan, in the Western District of New York, heretofore, to wit, on the 20th day of May, A. D., 1907, at said Penn Yan, in the Western District of New York, and within the jurisdiction of this Court did then and there wrongfully and unlawfully ship and deliver for shipment from the State of New York to the City of Omaha, in the State of Nebraska, two barrels of a certain wheat product, which said wheat product did not then and there contain as a constituent element thereof 5.6% of nitrogen, but did in fact contain no more than 1.37 % of nitrogen, and did then and there contain approximately 12.80% of moisture, and which said wheat product was not then and there pure gluten flour, and which said two barrels of said wheat product was then and there misbranded by having printed thereon the words "Pure Gluten Flour," contrary to the form of the statute in such case made and provided, to wit, An Act of Congress of the United States of America, entitled "An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors and

for regulating traffic therein and for other purposes," approved June 30th, 1906, and against the peace and dignity of the said United States of America.

Whereupon the said attorney of the said United States, who prosecutes as aforesaid for the said United States of America, prays for the consideration of the Court in the premises and that due process of law be awarded against the said The Birkett Mills, a corporation organized and existing under and by virtue of the laws of the State of New York in this behalf, to make it answer to the said United States of America concerning the premises aforesaid.

LYMAN M. BASS,

United States Attorney in and for the Western District of New York.

The following is a statement of the facts upon which the case is based:

On July 15, 1907, an inspector of the Department of Agriculture purchased from Courtney & Company, Omaha, Nebr., samples of an article labeled "Pure Gluten Flour, The Birkett Mills, sole manufacturers, Penn Yan, N. Y." The flour was duly analyzed by the Bureau of Chemistry, Department of Agriculture, and the results obtained indicated that it was not a gluten flour as defined in the "Standards of Purity for Food Products," promulgated under authority of the Secretary of Agriculture, in that it contained 12.80 per cent of moisture and 1.53 per cent of nitrogen, the former 2.80 above and the latter 4.07 per cent below the standard, which is as follows:

Gluten flour is the clean, sound product made from flour by the removal of starch and contains not less than five and six-tenths (5.6) per cent of nitrogen and not more than ten (10) per cent of moisture.

By this removal of starch the product is particularly adapted to the use of those persons whose digestive organs can not dispose of the starch in ordinary flour. The starch had not been extracted from the flour in this case, hence the person who supposed he was purchasing a pure gluten flour was deceived and misled. The statement on the sacks was, therefore, false, misleading, and deceptive, and the flour was offered for sale and sold by the defendant under the distinctive name of another article in violation of section 8 of the act.

Whereupon, the defendant having been afforded an opportunity to present evidence showing any fault or error in the finding of the analyst or examiner, the case, on December 28, 1907, was transmitted by the Secretary of Agriculture to the Department of Justice and by that Department referred to the United States Attorney for the Western District of New York for prosecution with the result hereinbefore stated.

H. W. WILEY,

GEO. P. MCCABE,

Board of Food and Drug Inspection.

Approved:

JAMES WILSON,

Secretary of Agriculture.

WASHINGTON, D. C., June 17, 1908.