

# United States Department of Agriculture,

OFFICE OF THE SECRETARY.

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## NOTICE OF JUDGMENT NO. 1440.

(Given pursuant to section 4 of the Food and Drugs Act.)

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### ADULTERATION AND MISBRANDING OF BLACKBERRY CORDIAL.

(TWO CASES.)

On July 7, 1910, the United States Attorney for the Southern District of Ohio, acting upon reports from the Secretary of Agriculture, filed two informations in the District Court of the United States for said district against the Bettman-Johnson Co., a corporation, alleging violations by it of the Food and Drugs Act on the dates and in the manner following:

On or about January 25, 1909, shipment from the State of Ohio into the State of California of a quantity of blackberry cordial which was adulterated and misbranded. The product was labeled "Peerless Cordial Blackberry, Artificial Flavor, Containing harmless Color and less than one tenth of one per cent benzoate of soda." That the words "Peerless Cordial Blackberry," aforementioned, then and there formed the principal part of said label and brand, and were then and there printed, stamped, and branded on the end of each of said barrels, as aforesaid, in large and conspicuous type, varying in height from one and one-fourth inches ( $1\frac{1}{4}$ "') to one and three-fourths inches ( $1\frac{3}{4}$ "'); that the remaining words appearing on said label and brand, as aforesaid, were subordinate to said principal label, and were printed, stamped, and branded on said barrels, as aforesaid, in type smaller than that of said principal label, and varying in height from three-eighths of one inch ( $\frac{3}{8}$ "') to five-eighths of one inch ( $\frac{5}{8}$ "'). Analysis of a sample of said product made by the Bureau of Chemistry of

the United States Department of Agriculture showed the following results:

Specific gravity.....	1.0866
Alcohol (per cent by volume).....	8.95
Solids (per cent).....	23.3
Reducing sugar, invert (per cent).....	17.6
Polarization, direct, temperature 20° C.....	V ° +18.0
Polarization, invert, temperature 20° C.....	V ° +17.2
Polarization, invert, 87° C.....	V ° +17.0
Ash, total (per cent).....	.456
Ash, soluble in water (per cent).....	.400
Ash, insoluble in water (per cent).....	.056
Alkalinity of soluble ash (cc N/10 acid 100 cc).....	15.0
Alkalinity of insoluble ash (cc N/10 acid 100 cc).....	14.0
Acid, as tartaric (cc N/10 KOH per 100 cc).....	94.4
Volatile acid, as acetic (cc N/10 KOH per 100 cc).....	47.0
Fixed acid, as tartaric (cc N/10 KOH per 100 cc).....	47.4
Glucose (per cent).....	10.4
Color—Anilin, Ponceau 3 R.	
Preservative—salicylic acid.....	None.
benzoic acid (per cent).....	.096
Saccharin.....	Present.

Found to be an imitation blackberry cordial made in part from glucose, and to contain artificial color used to simulate the color of blackberry cordial, and preserved with benzoate of soda. Also contains saccharin, which is not permitted.

Adulteration of said product was alleged for the reason that another substance, to wit, an imitation blackberry cordial which was artificially flavored and colored had been substituted wholly for said article represented to be blackberry cordial. Misbranding was alleged for the reason that said product was offered for sale and sold under the distinctive name of another article of food, to wit, blackberry cordial, it being an imitation blackberry cordial. Misbranding was further alleged for the reason that the label represented the product to be blackberry cordial when in fact it was not genuine blackberry cordial but was an imitation blackberry cordial, artificially flavored and colored, and the representation on the label was therefore false and misleading and calculated to deceive and mislead the purchaser of the product.

On or about November 8, 1909, shipment from the State of Ohio into the State of Illinois of a quantity of so-called blackberry cordial which was adulterated and misbranded. The product was labeled: "L. Sonnenschein Distributers, Eclipse Cordial Blackberry, Artificial Flavor, Containing Harmless Color & Less than one tenth of one per cent of benzoate of soda. Chicago, Ills." Analysis of a sample of said product made by the Bureau of Chemistry of the

United States Department of Agriculture showed the following results:

Specific gravity.....	1.1028
Alcohol (per cent by volume).....	8.24
Solids (grams per 100 cc).....	26.6
Sucrose.....	None.
Polarization, direct 20° C.....	° V+20.8
Polarization, invert 20° C.....	° V+20.0
Polarization, invert 87° C.....	° V+19.6
Ash (grams per 100 cc).....	.68
Ash, soluble in water (grams per 100 cc).....	.60
Ash, insoluble in water (grams per 100 cc).....	.08
Alkalinity of soluble ash (cc N/10 acid 100 cc).....	25.2
Alkalinity of insoluble ash (cc N/10 acid 100 cc).....	24.0
Acid, tartaric, total (grams per 100 cc).....	.48
Volatile acid, as acetic (grams per 100 cc).....	.134
Fixed acid (grams per 100 cc).....	.35
Benzoic acid.....	Present.
Sodium benzoate (per cent).....	.12
Saccharin.....	Present.
Color—Artificial Amaranth 107 S & J.	
Esters.....	.098
Salicylic acid.....	None.
Color removed by fuller's earth (per cent).....	15
Reducing sugar as invert (per cent).....	22.8

Adulteration was alleged against said product for the reason that another substance, to wit, an imitation blackberry cordial consisting of a fermented solution of starch sugar, artificially flavored, colored, and preserved, had been substituted wholly for said article represented to be blackberry cordial. Misbranding was alleged for the reason that said product was offered for sale and sold under the distinctive name of another article of food, to wit, blackberry cordial, consisting of a fermented syrup of starch sugar artificially flavored, colored, and preserved. Misbranding was further alleged for the reason that the label bore statements and designs regarding said article and the ingredients and substances contained therein which were false, misleading, and deceptive, and calculated to deceive and mislead the purchaser in that they purported and represented said article of food to be blackberry cordial when in fact said article of food was not genuine blackberry cordial but was an imitation blackberry cordial consisting of a fermented solution of starch sugar artificially flavored, colored, and preserved.

On July 18, 1910, the Bettman-Johnson Co. filed its appearance in both cases. The pleadings filed therein and the order thereof were identical in each case, with the exception of the dates on which they were filed and entered, and were as follows, except that the

dates given are those on which the said pleadings were filed and orders entered in case of the shipment of blackberry cordial on January 25, 1909:

On September 26, 1910, the defendant filed a motion to quash the information on the ground that it was not supported by proof establishing probable cause because it contained no venue and the affidavits in support thereof were defective. The said motion was argued and submitted to the court, and thereafter, to wit, on November 8, 1910, the court entered an order granting said motion but allowing the United States Attorney to amend the information by filing new amended affidavits, which was accordingly done on January 13, 1911.

On February 1, 1911, the defendant filed a motion to quash the information as amended, which the court overruled on February 6, 1911, to which ruling the defendant duly excepted, and thereafter, on February 8, 1911, filed a demurrer to the information on the ground of insufficiency of certain affidavits, which demurrer was sustained by the court, but with leave to the United States Attorney to file additional affidavits in support of the information, which was done on April 20, 1911. On April 20, 1911, the defendant filed a demurrer to the information as last amended, which was overruled by the court on September 30, 1911; and thereafter, to wit, on October 6, 1911, the defendant was arraigned and entered a plea of not guilty. On October 10, 1911, the defendant withdrew its plea of not guilty and entered a plea of nolo contendere; and thereafter, to wit, on February 2, 1912, the court fined the defendant \$25 and costs in each case, or a total of \$50 in fines.

W. M. HAYS,

*Acting Secretary of Agriculture.*

WASHINGTON, D. C., *March 30, 1912.*

