

# United States Department of Agriculture,

OFFICE OF THE SECRETARY.

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## NOTICE OF JUDGMENT NO. 2493.

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

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**U. S. v. C. F. Blanke Tea & Coffee Co. Tried to a jury. Verdict not guilty.**

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### MISBRANDING OF KAFEKA.

On January 30, 1912, the United States Attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the C. F. Blanke Tea & Coffee Co., a corporation, St. Louis, Mo., alleging shipment by said defendant, in violation of the Food and Drugs Act, on February 6, 1911, from the State of Missouri into the State of Virginia, and on December 14, 1910, from the State of Missouri into the State of Louisiana, of quantities of a product called Blanke's Kafeka which was misbranded. The product in both consignments was labeled: "One Pound Blanke's Kafeka. The original malted grain coffee. A Godsend for the Sick and Convalescent. A Nourishing and Health Giving Bread in Liquid Form. Manufactured by C. F. Blanke & Co. St. Louis, U. S. A. Blanke's Kafeka is the nearest approach to coffee ever put on the market. It has all the merits without any objectionable features. It makes a pleasant, healthful beverage, strengthens without stimulating, satisfies without shattering the nerves. Especially recommended for children. One Pound Blanke's Kafeka: The original Malted Grain Coffee. Nutritious, Palatable, Wholesome. A Health Food as well as a Table Beverage. Aids Digestion and makes Rich Healthy Blood. Manufactured by C. F. Blanke & Co. St. Louis, U. S. A. Directions:—Use a teaspoonful to a tablespoonful for every cup, according to strength desired. Bring the water to a boiling point, add the Kafeka and boil three or four minutes. If desired it may be strained. When served add cream and sugar to suit. We strongly advocate the use of cream in place of milk. Kafeka, unlike all other substitutes for coffee, can be made the French Drip method with very best results or you can make it any way that you have been making coffee."

Analysis of a sample of the product by the Bureau of Chemistry of this Department from the first consignment showed that it consisted of a cereal product mixed with about 10 per cent of low-grade coffee, the latter containing considerable coffee chaff. Analysis of a sample from the second consignment showed it to contain some coffee tissue, estimated at 10 to 15 per cent, mixed with roasted cereals. Misbranding of the product in the first consignment was alleged in the information for the reason that the statements contained upon the package and label regarding the article and the ingredients and substances contained therein were false and misleading, and said product was labeled and branded so as to deceive and mislead the purchaser thereof and so as to lead a purchaser thereof to believe that the product was composed wholly of grains and cereals and was a substitute for coffee, whereas, in truth and in fact, the product contained and consisted of about 10 per cent of a low grade of coffee, including a considerable amount of coffee chaff and other refuse, and was not composed wholly of grains or cereals, but was a mixture of cereals, low-grade coffee, and coffee screenings. Misbranding of the product in the second consignment was alleged for the reason that the statements contained upon the package and label regarding the article and the ingredients and substances contained therein were false and misleading, and said product was labeled and branded so as to deceive and mislead the purchaser thereof and so as to lead a purchaser thereof to believe that the product was composed wholly of grains and cereals and was a substitute for coffee, whereas, in truth and in fact, it contained and consisted of about 10 to 15 per cent of coffee tissues and was not composed wholly of grains or cereals, but was a mixture of cereals and coffee tissues.

On January 10, 1913, the case having come on for trial before the court and a jury, a verdict of not guilty was rendered by the jury. The following charge was delivered to the jury by the court (Dyer, *J.*) :

GENTLEMEN OF THE JURY: This inquiry, in my opinion, is limited to a very narrow compass.

What appears upon these boxes or cartons appears in this information, and the information charges in each count substantially the same thing. I will read from the information what appears upon these boxes or cartons:

"One Pound Blanke's Kafeka. The original malted grain coffee. A Godsend for the Sick and Convalescent. A Nourishing and Health Giving Bread in Liquid Form. Manufactured by C. F. Blanke & Co., St. Louis, U. S. A."

"Blanke's Kafeka is the nearest approach to coffee ever put on the market. It has all the merits without any objectionable features. It makes a pleasant, healthful beverage, strengthens without stimulating, satisfies without shattering the nerves. Especially recommended for children."

“One Pound Blanke's Kafeka. The original malted grain coffee. Nutritious, Palatable, Wholesome. A Health Food as well as a Table Beverage. Aids Digestion and makes Rich Healthy Blood. Manufactured by C. F. Blanke & Co., St. Louis, U. S. A.”

Then follow the directions upon each as to how to use it.

The information then charges that the statements I have just read, and which were contained upon said package and label, were false and misleading, and that the “said product was then and there labeled and branded so as to deceive and mislead the purchaser thereof in this: that said product is so labeled as to lead the purchaser thereof to believe that said product was composed wholly of grains and cereals and was a substitute for coffee, whereas in truth and in fact said product contained and consisted of about ten per cent (10%) of a low grade of coffee, including a considerable amount of coffee chaff and other refuse, and was not composed wholly of grains or cereals, but was a mixture of cereals, low grade coffee and coffee screenings.”

That charge brings this case, as I have said, into very narrow limits. I am not going to comment upon the testimony given by the witnesses in this case. It is sufficient to say that the Government has introduced witnesses who have testified that the contents of these packages contained coffee and caffeine.

Upon the other hand, the defense shows by its own testimony that there is no coffee or caffeine in these packages. It has introduced here as witnesses the President and Vice-President of this defendant Company. It has also introduced the miller, or the man who has charge of making this preparation.

You have heard the testimony of the Government's witnesses, saying that coffee is contained in these packages, and you have heard the testimony of the defendant's witnesses saying there is no coffee contained in the packages. If you find from the evidence in the case that, as charged in this information, coffee was used in this product, then it is misbranded within the meaning of the Food & Drugs Act. If you find upon the other hand, that there was no coffee and that coffee was not used in this product, then there is no misbranding of this article by the defendant Company.

So at last the case is narrowed down to the question, was there coffee used in this product, or was there not coffee used in this product? If there was, as I have said, then this is a misbranding of the article contained in the packages. If there was no coffee in it, then it is not a misbranding of the article. In my judgment, that is all that is inquired into. You are not asked to go into the question of whether this is a good, bad or indifferent product. There is no charge of that kind. The charge is that in the branding of this article, the customer purchasing it would be misled or deceived by what appears upon the box or carton; that is, as is charged in this information, the purchaser would think it was wholly of cereal and not of coffee, and that it was a substitute, the nearest to coffee, that could be made.

It is for you to say which side of this testimony you will take as being true. If the Government's witnesses are right, and you believe their testimony beyond any reasonable doubt in the matter, then your verdict should be a verdict of guilty against this corporation. If, upon the other hand, you believe the statements made by the defendant and its employees, then your verdict should be not guilty, under this information.

This information, gentlemen, contains two counts and is a criminal information; that is to say, it charges a specific offense which is and must be considered criminal in its character. The burden of proof in this case, as in all cases of like character, rests upon the Government, and that burden does not shift during

the entire trial. It is still upon the Government to prove to your satisfaction, beyond any reasonable doubt, what is alleged in this information to be true to-wit, that coffee was contained in these packages.

The defendant is presumed to be innocent and that presumption in this case, as in all cases of a criminal character, is to be maintained throughout the entire trial and until it is overcome by evidence that satisfies you beyond a reasonable doubt that the defendant is guilty. A reasonable doubt is such a doubt as would arise from all the testimony in the case, and such a doubt as would influence a man of ordinary business capacity in determining important issues.

If you are satisfied beyond any reasonable doubt that this defendant sent out these packages with the label on it that has been read in evidence, when in truth and in fact the product contained coffee, then, as I have said, your verdict will be in favor of the Government and a verdict of guilty against the defendant. If you are not satisfied beyond a reasonable doubt that this is true, then it is your duty to give the defendant the benefit of the doubt and return a verdict of not guilty.

That is all I can see in this case, gentlemen, and you may take the case, together with the indictment. The clerk has prepared a form of verdict which you may sign. If you find the defendant not guilty, insert the word "not" before the word "guilty" as contained in this form.

B. T. GALLOWAY,  
*Acting Secretary of Agriculture.*

WASHINGTON, D. C., *April 17, 1913.*

