

"In the Coca Cola case supra, the court clearly points out the considerations involved in determining distinctiveness of name, saying:

"Thus, soda water is a familiar trade description of an article which now, as is well known, rarely contains soda in any form. Such a name is not to be deemed either misleading or false, as it is in fact distinctive. But unless the name is truly distinctive, the immunity cannot be enjoyed; but it does not extend to a case where an article is offered for sale "under the distinctive name of another article." Thus, that which is *not* coffee, or is an imitation of coffee, cannot be sold as coffee; and it would not be protected by being called "X's Coffee." Similarly, that which is not lemon extract could not obtain immunity by being sold under the name of "Y's Lemon Extract." The name so used is not "distinctive" as it does not properly distinguish the product; it is an effort to trade *under the name of an article of a different sort*. So, with respect to mixtures or compounds, we think that the term "another article" in the proviso embraces a different compound from the compound in question. The aim of the statute is to prevent deception, and that which appropriately describes a different compound cannot secure protection as a "distinctive name."

"A "distinctive name" may also of course be purely arbitrary or fanciful and thus, being the trade description of the particular thing, may satisfy the statute, provided the name has not already been appropriated for something else so that its use would tend to deceive."

"Therefore the clause of the statute: 'If it be an imitation of or offered for sale under the distinctive name of another article' seems to me to deal first with imitations, that is, things patterned after, or a copy of, or made in simulation of another article and, as such, offered or put out as the genuine; second, articles, whatever they may be, whether imitation or not, which are put out under the distinctive name of another article. The statute condemns the use of means which being used arouse the belief that one thing is really another.

"It is my judgment that the limitations of the statute are such that the case before us is not comprehended; and this view necessarily excludes from the case the testimony dealing with the former practices of the claimant.

"A decree dismissing the libel may be entered."

W. M. JARDINE, *Secretary of Agriculture.*

14417. Misbranding of cottonseed cake. U. S. v. Whitesboro Oil Mill. Plea of guilty. Fine, \$10 and costs. (F. & D. No. 19726. I. S. No. 22700-v.)

On March 12, 1926, the United States attorney for the Eastern District of Texas, 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 Whitesboro Oil Mill, a corporation, Whitesboro, Tex., alleging shipment by said company, in violation of the food and drugs act, on or about January 5, 1925, from the State of Texas into the State of Kansas of a quantity of cottonseed cake which was misbranded. The article was labeled in part: (Tag) "Choctaw Chief Brand * * * Guaranteed Analysis Protein not less than 43%, * * * Crude Fiber not more than 12% * * * Manufactured By Choctaw Cotton Oil Company * * * Ada, Oklahoma."

Analysis by the Bureau of Chemistry of this department of a sample from the shipment showed that it contained 39.68 per cent protein and 12.67 per cent crude fiber.

Misbranding of the article was alleged in the information for the reason that the statements, to wit, "Guaranteed Analysis Protein not less than 43% * * * Crude Fiber not more than 12%," borne on the labels were false and misleading, in that the said statements represented that the article contained not less than 43 per cent of protein and not more than 12 per cent of crude fiber, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained not less than 43 per cent of protein and not more than 12 per cent of crude fiber, whereas the said article contained less protein and more fiber than represented, to wit, approximately 39.68 per cent of protein and approximately 12.67 per cent of crude fiber.

On May 19, 1926, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$10 and costs.

W. M. JARDINE, *Secretary of Agriculture.*