

4317. Alleged misbranding of oriental cream. U. S. * * * v. 6 Dozen Bottles of Oriental Cream. Tried to the court. Judgment for claimant. (F. & D. No. 3199. I. S. No. 1960-d. S. No. 1172.)

On November 23, 1911, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, and on November 16, 1911, an amendment to the libel, praying the seizure and condemnation of 6 dozen bottles of a certain drug product purporting to be an oriental cream, remaining unsold in the original unbroken packages at Milwaukee, Wis., alleging that the product had been shipped on October 5, 1911, and transported from the State of New York into the State of Wisconsin, and charging misbranding in violation of the Food and Drugs Act. Each bottle was labeled: "Oriental Cream or Magical Beautifier, an Elegant and Delicate Preparation for the skin and complexion, for tan, pimples, freckles, morpew and blemishes of the Cuticle. Prepared by Ferd T. Hopkins, Successor to T. Felix Gouraud, 37 Great Jones Street, New York. Price \$1.50 per bottle. Guaranteed by Ferd T. Hopkins, under the Food & Drugs Act, June 30, 1906. Serial No. 1583. Directions; Shake the bottle well; apply with a piece of velvet sponge and rub quickly with a soft surface. The thinner put on the more delicate the complexion. None genuine without the signature of T. Felix Gouraud." (On sticker around the neck of the bottle) "Use Gourauds Oriental Velvet Sponge to apply Oriental Cream." (On paster on bottom of bottle) "Gourauds Oriental Velvet Sponge should always be used when applying Oriental Cream to obtain the best results. It is specially selected for applying this article and will give better satisfaction than by using an ordinary sponge, Price 50c at Druggists and Fancy Goods Dealers, or will be mailed direct on receipt of price. F. T. Hopkins, Prop." (Following words blown in glass of bottle) "Oriental Cream Gourauds New York."

Misbranding of the article was alleged in the libel for the reason that the bottles containing said drug product bore certain statements regarding it and the ingredients and substances contained therein which were false and misleading; that among said false and misleading statements was the following, to wit, that the term "Oriental Cream" led one to believe, and was calculated to convey the impression, that it was a drug similar to, and composed of ingredients characteristic of, cold cream, whereas, in truth and in fact, said so-called Oriental Cream was a solution in water of mercurous chlorid, commonly known as calomel. Misbranding was alleged in the amendment to the libel for the reason that the words "Oriental Cream," appearing on said label as aforesaid, were calculated to convey the impression and deceive the public into the belief, and cause and lead the buyers and consumers thereof to believe, that said drug product was a cream of oriental origin, made, manufactured, and prepared in the Orient, whereas, in fact and in truth, said cream constituting and composing said drug product as aforesaid was not of oriental origin, or made, manufactured, or prepared in the Orient, but was made, manufactured, and prepared in the United States of America.

On January 15, 1912, and on April 19, 1912, the Milwaukee Drug Co., claimant, Milwaukee, Wis., filed its answer and new answer, respectively. On July 30, 1915, the case having come on for hearing and having been submitted to the court as an issue of law upon the pleadings, after argument by counsel, judgment in favor of the claimant company was rendered by the court, and it was ordered that the libel in the case be dismissed.

The court (Geiger, J.) found, in effect, that the word "Cream," in the phrase "Oriental Cream," was used in an adjective or descriptive sense. He

compared it to the expression "Cream of Wheat" and said that the word "Cream," in the sense in which it was employed, was the equivalent of quintessence; that is to say, that it represented the highest and best and purest concentration of the product or the drug in connection with which it was employed; and because the statement "Prepared by Ferd. T. Hopkins, Successor to T. Felix Gouraud, 37 Great Jones Street, New York," also appeared upon the label directly under the expression "Oriental Cream," the court determined that there could be no deception as to the place of origin and that the purchaser could not be deceived or misled into believing that the contents constituting and comprising said drug product was of oriental origin.

CARL VROOMAN, *Acting Secretary of Agriculture.*