

Issued February 10, 1910.

# United States Department of Agriculture,

OFFICE OF THE SECRETARY.

---

## NOTICE OF JUDGMENT NO. 155, FOOD AND DRUGS ACT.

---

### MISBRANDING OF BAKING POWDER.

(UNDER WEIGHT.)

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 3rd day of April, 1909, in the District Court of the United States for the Northern District of Florida, in a proceeding of libel under Section 10 of the aforesaid act, for the seizure and condemnation of a misbranded food product, that is to say, 720 cases of baking powder labeled and branded as containing "50 one-pound Full Weight," whereas the average weight of each can contained in the said cases was 14.9 ounces, which had been shipped by the Continental Baking Powder Company from Nashville, Tenn., to the Consolidated Grocery Company, a corporation of Pensacola, Fla., no claimant having appeared to make answer to the allegations of misbranding contained in said libel, the court rendered a *pro confesso* decree, in favor of the libellant for the forfeiture and condemnation of said product, which decree was in due course made final by said court. The decree is in substance and form as follows:

IN THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF FLORIDA.

"UNITED STATES OF AMERICA, *Libellant*,

*vs.*

SEVEN HUNDRED AND TWENTY (720) cans of Baking Powder.

"This cause coming on to be heard upon application of the United States for a final decree herein; it appearing to the Court that due and legal service was made in said proceeding; and it further appearing to the Court that a decree *pro confesso* was duly and legally entered herein according to the course

of practice in admiralty and maritime causes; upon consideration thereof the court being advised of its opinion;

“It is ordered, adjudged and decreed that the allegations of the libel herein be taken as confessed; that is to say, that on the 26th day of September, 1907, and the 27th day of November, 1907, the Continental Baking Powder Company of Nashville, Tennessee, shipped in the aggregate seven hundred and twenty cases (720) of baking powder from Nashville, Tennessee, to Pensacola, Florida, consigned to the Consolidated Grocery Company, at Pensacola, Florida, the said shipment coming from Nashville, Tennessee, to Pensacola, Florida, over the Louisville & Nashville Railroad Company’s lines; that said baking powder is labeled on the shipping cases thereof as follows, to-wit:—“50 1 LB Full Weight Grade H. I. LO, Low Price Baking Powder Pure Continental Baking Powder Co., Nashville, Tenn. Pure Food Guaranteed Serial Number 7950.”

“The said Baking Powder is misbranded within the meaning of the Food & Drugs Act of June 30, 1906, in that it is labeled and branded as aforesaid in a manner to indicate that the cans contain one (1) pound of baking powder, when in truth and in fact the average net weight of a unit package is only 14.9 ounces, being an average shortage of 1.1 ounces per can.

“Wherefore it is ordered and decreed by the Court that the United States Marshal shall label and brand said boxes containing said cans of baking powder; representing that said cans contain 14.9 ounces of baking powder; that the said Marshal thereupon shall advertise and sell said baking powder, as provided by law and shall, out of the proceeds of said sale, pay the costs incurred in this action and pay the remainder, if any, into the Treasury of the United States, as provided in Section 10 of said Act of Congress; provided, however, that the said Consolidated Grocery Company, upon the payment of the costs of this libel and the execution of a good and sufficient bond in the sum of Fifteen Hundred (1500) Dollars, conditioned that the said Consolidated Grocery Company shall label said goods in accordance with the judgment of the Court, as herein expressed; and further conditioned that they will not sell or dispose of said baking powder in violation of the laws of the United States or the laws of any State or Territory, shall have the right to the possession of said baking powder now in the possession of the said United States Marshal, and the said United States Marshal is hereby directed to deliver said baking powder to the said Consolidated Grocery Company or its authorized agent upon the execution and delivery of the aforesaid bond, and the payment of the aforesaid costs within twenty (20) days from this date.

“Done, ordered and decreed in Chambers at Pensacola, Florida, this 3rd day of April, A. D. 1909.

WILLIAM B. SHEPPARD,  
*Judge.*”

The facts in the case were as follows:

On or about February 27, 1909, an inspector of the Department of Agriculture found in the possession of the Consolidated Grocery Company, Pensacola, Fla., 720 cases of baking powder labeled and branded “50 one-pound Full Weight High Grade Hi Lo Low Price Baking Powder Pure, Continental Baking Powder Co., Nashville, Tenn.” which had been shipped by the Continental Baking Powder Company from Nashville, Tenn., to the said consignee, on September 24, and November 26, 1907. A number of cans were weighed in the Bureau of Chemistry, United States Department of Agriculture, and

the average net weight found to be 14.9 ounces, showing a shortage of 1.1 ounces or 7 percent. The goods were, therefore, misbranded within the meaning of section 8, Paragraph 3, of the Act, which provides as follows:

“That an article \* \* \* shall be deemed to be misbranded \* \* \* if, in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package,”

and on February 27, 1909, the facts were reported by the Secretary of Agriculture to the United States attorney for the Northern District of Florida and libel for seizure and condemnation was duly filed, with the result hereinbefore stated.

JAMES WILSON,  
*Secretary of Agriculture.*

JANUARY 10, 1910.

