

FOODS AND DRUGS:) The mixing within the State of Missouri of butter,
vegetable fats, vitamins and preservatives to make
BUTTER:) a product intended for human food without the labels
specifying in what percentage the vegetable fats
AGRICULTURE:) enter into the composition is a violation of Section
196.770, RSMo 1949, and that the offering of such
product for sale, without informing the purchaser
of the percentage or quantity of the various
ingredients, is also a violation thereof.



May 15, 1953

Honorable Ray DeWitt
Acting Director, Dairy Division
Department of Agriculture
State of Missouri
Jefferson City, Missouri

Dear Mr. DeWitt:

We render herewith our opinion based on your request of April 30, 1953, which request is as follows:

"Section 196.770 RSMo 1949 states that oleomargarine shall not be mixed with butter without distinctly marking the percentage of butter in which such oleomargarine enters into its composition.

"We have in our possession a one-pound package of Reddi-Spred which is distributed by Reddi-Spred Corporation of Philadelphia, Pennsylvania. This Reddi-Spred has butter added to vegetable fats. On one side of the package is the word 'Margarine'; on another side is the word 'Oleomargarine'; but the percentage of butter added is not given.

"We are respectfully requesting an opinion as to whether or not this product is in violation of Section 196.770 RSMo 1949."

By a subsequent telephone conversation with you we have learned that the label on the package referred to in your letter contains the percentage of preservatives and vitamins and a list, but not the percentage or quantity, of the other ingredients, including butter.

Honorable Ray DeWitt

The statute to which you refer, Section 196.770, RSMo 1949, reads as follows:

"Labeling of butter and oleomargarine, mixed.--No person shall mix oleomargarine, suine, butterine, beef fat, lard or other foreign substance with any butter or cheese intended for human food without distinctly marking or stamping or labeling the article or package containing the same with the true and appropriate name of such article, and the percentage in which such oleomargarine or other such substance enters into its composition. Every person offering for sale must inform the purchaser of contents and makeup of article. Whoever shall violate the provisions of this section shall be punished as provided for by section 196.790."

It appears that in the product to which you refer oleomargarine "or other foreign substance" has been mixed with butter; that it is intended for human food; and that there is no marking, stamping or labeling on the article or package containing the percentage in which oleomargarine "or other such substance" enters into the composition of the product.

This being so, there is no doubt that the mixing of the product you have described labeled in the manner you have described is in violation of the above-quoted section.

We point out, however, that this statute has no extra-territorial force and that it would be violated only by mixing within the State of Missouri. It is not concerned with mixing outside the state.

While you do not specifically request it, your original telephone request indicated that you would be interested in the liability of the retailer selling this product within the State of Missouri.

Honorable Ray DeWitt

"Every person offering for sale," the statute provides, "must inform the purchaser of contents and make-up of article." We believe that this portion of the statute requires the seller to furnish the purchaser the information, not only as to the ingredients but also as to the percentage or quantity of each ingredient.

The word "make-up" is defined by Webster as follows:

"MAKE-UP, n. 1. The way in which the parts of anything are put together; manner or method of construction; also, the constitution or composition of anything; the elements of anything; as, the make-up of a ball team; physical, mental, and moral constitution; as, the human make-up."

If the statute only requires the seller to inform the purchaser of the ingredients, then that requirement is made by use of the word "contents." It is apparent by use of the word, "make-up," that the legislature intended to require something more, to-wit: the quantity or percentage of each ingredient. This conclusion is supported by the preceding portion of the statute referring to the mixing of the article, and requiring the label to specify the percentage in which any substance other than butter enters into the composition; and by the object apparently sought to be accomplished, to prevent the misleading of the consuming public by the inclusion in an article of an infinitesimal amount of butter and then representing the product merely as "containing butter," without specifying how much, and without specifying the quantity or percentage of the other substance.

This is not to be taken to mean that the sale of the product you have described is ipso facto a violation of law; but that the seller is required in some manner to give the buyer more information than is contained in the label, in particular the percentage or quantity of the ingredients. This information could be given the purchaser in any way -- by label, sign, orally, or in any way in which the information might be conveyed to the purchaser.

Honorable Ray DeWitt

CONCLUSION

It is the opinion of this office that the mixing, within the State of Missouri, of butter, vegetable fats, vitamins and preservatives to make a product intended for human food, without the label's specifying in what percentage the vegetable fats, vitamins and preservatives enter into the composition is a violation of Section 196.770, RSMo 1949; and that the offering of such product for sale, without informing the purchaser of the percentage or quantity of the various ingredients, is also a violation thereof.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON
Attorney General

WDK/fh