

UNITED STATES OF AMERICA  
IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

No. 1:93-CR-21

vs.

Hon. Robert Holmes Bell

FRIEDRICH R. "FRED" KOHLBACH,

Defendant.

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DECLARATION OF JAMES R. MARSHALL

Pursuant to 28 U.S.C. § 1746, JAMES R. MARSHALL declares as follows:

1. I was born on March 1, 1926, in Pittsfield, Massachusetts. I received a Bachelor of Science Degree in Food Technology from the University of Massachusetts in June 1949. I was awarded a Master of Science Degree in Food Technology from the University of Massachusetts in June 1951. Microbiology and the study of enzymes are part of the course of instruction in the field of Food Technology.

2. Between 1962 and 1974, I was employed at Home Juice Corporation ("Home Juice") in Melrose Park, Illinois. At Home Juice I held the position of Vice President of Research and Development.

**EXHIBIT**

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3. In 1974 I formed Mr. Juicy of Illinois ("Mr. Juicy") a corporation registered under the laws of the State of Illinois. In 1977 James E. Benton became a part owner of Mr. Juicy. In the early 1980's the corporate entity of Mr. Juicy of Illinois was changed to Flavor Fresh Foods Corporation ("Flavor Fresh"). I was a 49% owner of Flavor Fresh, and James E. Benton owned the other 51% of the corporation.

4. I first met Friedrich R. Kohlback in 1962 or 1963 when Kohlback visited Home Juice on business. Since this time I have maintained a business relationship with Kohlback.

5. Kohlback is an individual extremely knowledgeable in the area of juice manufacturing and packaging. It is my understanding that Kohlback is a worldwide consultant to the juice industry.

6. In approximately 1982, Kohlback advised me of a very effective enzyme he wanted to market in the United States. Kohlback advised me that when this enzyme was mixed with juice it would prevent microbial and yeast infection in juice. Kohlback further advised me that his product was undetectable.

7. At this time I knew that Donald Wayne Wagoner, then general manager at Peninsular Products Company ("Peninsular"), Lansing, Michigan, was seeking an effective and undetectable preservative to use in his juices as well as in my Flavor Fresh brand orange juice.

8. I arranged a meeting where Kohlback, Wagoner and I met to discuss the sale and use of Kohlback's preservative. At this meeting, Kohlback discussed the sale of an injection system, which could be installed at Peninsular, to inject his enzyme intimately with the juice and thereby prevent spoilage. Kohlback discussed the dual nature of this system. According to

Kohlbach, the system could be used legitimately for the introduction of orange aroma into the juice, which would provide an excellent cover for its primary purpose of injecting preservative into the juice.

9. I agreed to import Kohlbach's preservative into the United States. Kohlbach declared his product on import documents as a cleansing and aseptisizing compound. I knew this was a false declaration by Kohlbach in order to conceal from United States authorities the true identity and nature of his product.

10. There has never been any doubt in my mind that Kohlbach's product was a preservative. Kohlbach always promoted his product as a preservative, and the product was to be used as a preservative, (e.g., to be added directly to the juice after pasteurization). In addition, I learned in October 1987 through a telefax from Kohlbach that his product contained as an active ingredient natamycin. I knew from my experience and training that natamycin was an antimicrobial antibiotic preservative that could not be lawfully added to juice.

11. I also knew through my business and personal relationships with individuals at Home Juice in Melrose Park and Everfresh in Michigan, large juice manufactures and distributors, that Kohlbach's preservative was illegally used in their 100% orange juice. I know that Home Juice had a machine that was capable of spraying Kohlbach's preservative into the juice while the juice was being packaged. Kohlbach described this system as an "aseptic line with insurance." In the juice industry, a true aseptic system is one that packages juice under sterile conditions so as to prevent microbial infection. It does not require the addition of a preservative as "insurance."

12. Kohlbach always spoke of Ingko and IDEA as if they were his companies. It was my understanding that Kohlbach owned IDEA, which later became Bio Trade. It was also my understanding that at some point, Kohlbach sold his interest in the company to Bio Trade, but remained an agent for Bio Trade's preservatives.

I declare under the penalty of perjury that the foregoing statement is true and correct.

EXECUTED:

Dated: *Oct 13*  
September \_\_\_\_\_, 1993

  
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JAMES R. MARSHALL  
Witness