

UNITED STATES DEPARTMENT OF AGRICULTURE,  
BOARD OF FOOD AND DRUG INSPECTION,  
WASHINGTON, D. C.

ADDRESS ALL CORRESPONDENCE  
TO THE BOARD OF FOOD AND DRUG  
INSPECTION.

November 3, 1908.

The Secretary of Agriculture:

I beg to inform you that the Coca Cola Company of Atlanta, Georgia, shipped on October 31, in L. & N. Car No.. 9252 via the Louisville and Nashville Railroad from Atlanta, Georgia, to Little field and Steere, Knoxville, Tenn., 10 barrels and 15 kegs of a product labeled as "Delicious and Refreshing Coca Cola, The Coca Cola Company." The label bears further statements as to places of manufacture and a guarantee legend under the Food and Drugs Act, Serial No. 3324.

Analysis of a number of samples obtained from other consignments of a product labeled in a similar manner, which were examined in the Bureau of Chemistry, reveals this product to contain an added ingredient, caffeine, which may render the product injurious to health. This added ingredient is introduced chiefly, if not wholly, as caffeine derived from waste tea leaves and not from the use of the cola nut, as the name would indicate; although the product is labeled "Coca Cola," it does not contain the chief active principle of "Coca," as the name would indicate, but an extract prepared from a refuse product obtained in the manufacture of cocaine. Inspection of the premises and the conditions under which the product is manufactured reveals that it is produced under filthy and unhygienic conditions which would render the article liable to contain in part filthy, decomposed and putrid animal and vegetable substances. This product is adulterated in violation of Section 7 of the Food and Drugs Act, Paragraph 3, under foods, which deem an article to be adulterated:

"If any valuable constituent of the article has been wholly or in part abstracted"

and under Paragraph 5, which states

"If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health."

It is misbranded under Section 8 of the Food and Drugs Act, which deems an article to be misbranded

"If the package containing it or its label shall bear any statement, design, or device regarding the ingredient or substance obtained therein, which statement, design, or device shall be false or misleading in any particular."

It is also misbranded in violation of Regulation 26 promulgated under the same Act which states:

"When an article is made up of refuse material, fragments, or trimmings, the use of the name of the substances from which they are derived, unless accompanied by a statement to that effect, shall be deemed a misbranding. Packages of such material may be labeled "pieces," "stems," "trimmings" or some similar appellation."

Evidence concerning the analysis of this product can be furnished by L. F. Kebler, H. C. Fuller, F. P. Morgan and H. H. Rusby, of the Bureau of Chemistry, and evidence as to the conditions under which the product is manufactured can be furnished by L. F. Kebler and H. W. Barler, of the Bureau of Chemistry. Identification of this consignment and evidence of interstate shipment can be furnished by Inspector J. L. Lynch of the Bureau of Chemistry. This consignment reached the point of destination on November 2, and unless delivered to the consignee is still in possession of the carrier company. It is confiscable under the Food and Drugs Act, Section 10, which states:

"Any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this Act, and is being transported from one state... to another for sale, or, having been transported, remains unloaded, unsold, or in the original unbroken packages, .... shall be liable to be proceeded against in any District Court of the United States within one district where the same is found, and seized for confiscation by a process of libel for condemnation."

I respectfully recommend that the United States Attorney for the district including Knoxville, Tenn., be immediately notified, requested to cause seizure to be made, and to procure the necessary decree of Court for the collection of samples to be submitted for examination to the Bureau of Chemistry in behalf of the Government and defendant.

Respectfully,

*H. W. Wiley*  
H. W. Wiley,

Chairman.

Approved: Secretary.

**Postscript:** In 1882, Indiana civil war veteran and scientist Harvey Washington (HW) Wiley accepted an offer to serve as Chief Chemist for the United States Department of Agriculture (USDA). At USDA, Wiley made a name for himself studying the effects of common food additives on human health.

While Wiley studied the harmful effects of additives, down in Georgia, another civil war veteran, John Pemberton, put those same additives to use developing beverages and patent medicines to ease the pain of his war wounds. Pemberton's first popular formula relied on a mix of alcohol, coca, and kola nut extract, but in 1886 Atlanta passed prohibition, and Pemberton needed to formulate a new mixture. His new drink, Coca Cola, substituted alcohol for another addictive American staple: caffeine. Over the next few decades, Pemberton's beverage picked up steam, first as a syrup, then as a bottled drink. Wiley was busy in Washington lobbying for Congress to regulate the growing interstate food, beverage, and pharmaceutical industry, but he noticed the beverage's rise and lamented its use of caffeine.

In 1906, Wiley's public lobbying campaign succeeded. President Theodore Roosevelt signed the Pure Food and Drug Act (PFDA) and tasked the now-world-famous Wiley with implementing it. Wiley put

the regulatory authority created in the law to broad and immediate use, hoping to build concrete legal precedent for action from the law's vague statutes. He went after candy manufacturers who included chloroform in their lozenges, the Heinz Company for marketing an "India Relish" not made in India, Quaker Oats Oatmeal for marketing "Scotch Oats" with no connection to Scotland, and of course, Coca-Cola.

At the turn of the century, coffee and caffeine were under siege. The most prolific attacker was cereal magnate CW Post, who spent millions pitching his "postum" as a safe alternative to the deadly coffee. Wiley confirmed on rats in his lab that caffeine could indeed be lethal in high enough doses, and came to the conclusion that the substance should be banished from the American diet. Yet Wiley was powerless against the coffee and tea industry. Caffeine is a naturally occurring substance in the drinks, meaning it didn't qualify for regulation under the PFDA. Coca-Cola, with its added caffeine, offered Wiley a powerful and popular target whose prosecution would bring ample attention to his campaign against caffeine.

In this week's letter, Wiley makes the case to US Secretary of Agriculture James Wilson, his boss, for the seizure of Coca-Cola and the initiation of a lawsuit. After much prodding from Wiley, Wilson eventually authorized US Marshals to seize the Coke in Chattanooga, initiating the wonderfully titled "In Rem" court case, "United States vs. forty barrels and twenty kegs of Coca-Cola." Government attorneys justified their seizure of the Coke on the grounds that first, it was mislabeled (containing only a few scraps of Coca from the cocaine-making process, and no Cola), and that second, the drink's added caffeine was an illegal health hazard. The government also noted the unsanitary conditions under which the beverage was made, a common refrain in the era of Upton Sinclair's "The Jungle," (The Federal Meat Inspection Act was signed on the same day as the PFDA) but those claims were not central to the government's case. Company lawyers countered that Coca-Cola was a trade name, not a descriptive term and that caffeine, crucial to the original formula for the drink, was not truly an added ingredient, and that Wiley had exceeded his authority. The company also commissioned any Ivy League scientist to produce studies showing that caffeine, in the doses found in their drink, was perfectly safe, or even healthy, for most adults.

Coca-Cola won at trial and on appeal, but Coke's legal battle for survival was not over. Determined to win the case, Wiley directed his lawyers to appeal the case to the United States Supreme Court. In 1916, the Supreme Court unanimously reversed Coca-Cola's win, admonishing the lower courts for not seeing that caffeine was clearly an added ingredient by the text of the statute, and leaving it to those lower courts to try the case again and determine whether caffeine was dangerous within the confines of the law.

Wiley was determined to see the case through to the end, but elsewhere in the USDA support for the case was waning. New Secretary of Agriculture David F. Houston forced Wiley out of his post, and the government swiftly settled with Coca-Cola. In return for the government's dropping its suit, Coca-Cola agreed to halve the amount of caffeine in a serving of Coke. Though the beverage lost energy, the company lost little momentum, selling in 1919 for the enormous sum of \$25 million (\$370 million in 2020 dollars), then going public shortly afterward.

After his ouster, Wiley continued his crusade against dangerous and misleading products as the head of the labs of *Good Housekeeping* magazine. Wiley was assisted in his "pure food" campaign by his wife, Anna Campbell Kelton Wiley, who also made a name for herself as a suffragette. Wiley's agency, renamed the Food and Drug Administration (FDA) in 1930, continued to struggle to assert its authority until 1938 when Congress passed the Food, Drug and Cosmetic Act. This act greatly expanded the FDA's authority and mandated that new drugs receive the agency's approval before hitting the market.