



Figure 15  
An American icon, Holiday Inn's Great Sign was retired in the early 80s.  
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## What Doesn't Kill You Only Makes You Stronger: How the Temperance Movement Helped Make Coca-Cola

Staci Rogers

*Staci Rogers is a M.A. candidate at Eastern Illinois University expecting to graduate in May 2011. She received her B.A. from Southern Utah University majoring in History, minoring in Psychology and certifying in Secondary Education. This paper was written for Dr. Lynne Curry's 5160 seminar; American Between the Wars. Staci is from Bountiful, Utah.*

Coca-Cola was not a national wonder when it first hit the soda fountains. In fact, Coca-Cola comes from very humble beginnings and almost wasn't, due to the temperance movement. Coca-Cola's market dominance is the result of its battle with, and subsequent victory over, the temperance movement, whose attempts to eradicate Coca-Cola only made it stronger.

### "Patent Medicines," "Nostrums," and Coca-Cola

To understand the Coca-Cola Company's problems with the temperance movement we must start with a general history of the Coca-Cola Company. And, to understand the Coca-Cola Company we must understand the history of "patent medicines," for it is under this classification that Coca-Cola was born.

The term "patent medicine" is a general term for medicines whose names were patented, but the ingredients were kept "secret."<sup>1</sup> Another, more animated, term for these drugs was "nostrums," and the doctors that produced, or at least prescribed them to their patients, were known as "quacks." Arguably the idea of quack medicine can first be seen in the medicine man of primitive times.<sup>2</sup> And, still today, there is no lack in quick fix solutions, especially in the arena of weight loss and beauty products.

But what made a nostrum different from a "real" medicine? The medication received from the quack doctor and the local apothecary shop could have been identical. The apothecary, however, owned a permanent shop and was subject to inspection of the tonics and pills he was selling. The quack doctor was more transient and his formulas could have been more inventive and unsafe. Nevertheless, there was no guarantee that the local apothecary's medicines would have been any more reliable than the quack's; it was merely a perception of stability that made the difference.<sup>3</sup>

<sup>1</sup> Mark Pendergrast, *God Country and Coca-Cola* (New York: Macmillan Publishing Company, 1993), 11.

<sup>2</sup> Eric Jameson, *The Natural History of Quackery*, (Springfield: Charles C. Thomas, 1961), 14-17.

<sup>3</sup> *Ibid.*, 36-38.

These nostrums came in all shape and sizes and contained ingredients from the weird to the downright toxic. In 1921, the American Medical Association printed a book entitled *Miscellaneous Nostrums* to inform and warn the public of ingredients in many popular nostrums including such as turpentine and formaldehyd(e).<sup>4</sup> Nostrums were commonly sold to an unsuspecting public through fraudulent advertising.

Although today we look at these nostrums and scoff, we still use a handful of them faithfully. Vicks's Vap-O-Rub was found to be a safe balm, with the exception of the oil of turpentine.<sup>5</sup> Bromo-seltzer, and Midol are also products, though not necessarily in their current formulas, of the "patent medicine" era.<sup>6</sup> It is among these nostrums and "patent medicines" that Coca-Cola began, but under the name 'Dr. Pemberton's French Wine Coca.'

Although John Pemberton put his French Wine Coca on the market in 1884, his was not the original cola beverage. Vin Mariani was invented in 1863 in Corsica. This was a simple, and highly copied, potion of "Bordeaux wine with a healthy infusion of coca leaf."<sup>7</sup> The Vin Mariani was intensely popular, in part due to its endorsements. Thomas Edison, William McKinley, Queen Victoria, Buffalo Bill Cody, and three Popes, including Leo XIII, testified to Vin Mariani's potency and ability to lengthen life. It was also used to soothe Ulysses S. Grant as he lay dying of throat cancer.<sup>8</sup>

Because of the popularity of Vin Mariani, impersonators sprang up from every angle. The recipes ranged from cheap to expensive, weak to potent, delicious to sickening. The central ingredients of Vin Mariani, as well as the imitators, were alcohol and cocaine. Vin Mariani's directions called for a person to have three full claret glasses per day<sup>9</sup>—one after each meal and half of that for children. According to similar recipes of the time, the average amount of cocaine intake per day would be, as directed, 2.16 grams.<sup>10</sup> How good would this have made people feel? Today the lethal dose is measured at 1.2 grams.<sup>11</sup> Drinking one full day's worth in one

<sup>4</sup> American Medical Association, *Miscellaneous Nostrums*, (Chicago, American Medical Association, 1921), 18 & 210.

<sup>5</sup> *Ibid.*, 210.

<sup>6</sup> For brands see American Medical Association, *Miscellaneous Nostrums*, 1921, James Harvey Young, *The Toadstool Millionaire* (Princeton: Princeton University Press, 1961), and Adam Cramp, *Nostrums and Quackery* (Chicago: Press of the American Medical Association, 1921).

<sup>7</sup> Pendergrast, 24.

<sup>8</sup> *Ibid.*, 25.

<sup>9</sup> Approximately 5 ounces. See [http://www.cocktaildb.com/barwr\\_detail?id=4](http://www.cocktaildb.com/barwr_detail?id=4)

<sup>10</sup> *Ibid.*, 25.

<sup>11</sup> RxList.com, "Cocaine (Cocaine Hydrochloride Topical Solution) Drug Information: Uses, Side Effects, Drug Interactions and Warnings at RxList." <http://www.rxlist.com/cocaine-drug.htm> (accessed December 1, 2009).

sitting, depending on the potency of that batch, could have been fatal. It is no wonder that there were so many testimonials of the recipes perceived healing powers. By the early 1880s, doctors and pharmacists were reporting on the use of coca and its principal alkaloid, cocaine, as a possible cure for the serious problem of opium and morphine addiction.<sup>12</sup>

Pemberton's concoction had two ingredients that the others didn't. He added to the original mixture of wine and cocaine the kola nut and damiana. The kola gave the elixir more caffeine than coffee or tea and damiana was added as an aphrodisiac.<sup>13</sup> Pemberton's amalgamation now contained alcohol, cocaine, caffeine, and an aphrodisiac.

To understand the popularity of French Wine Coca, we should know that John Pemberton was one of the more respected doctors in Atlanta. He had been running his own drug store for years and had actually graduated from medical school. Pemberton was also a veteran of the American Civil War, wounded in action and saved only by the moneybag that he strapped to his chest.<sup>14</sup> Because of his experiences in the war and his own medical knowledge, Pemberton knew the medical field as a doctor and a patient. There were many reasons people turned to patent medicines rather than hospitals and doctors at the end of the nineteenth and beginning of the twentieth century's. A bottle of medicine that advertised itself as a "cure-all" could be purchased for a dollar or less at the corner drug store or from the traveling salesman who came to your home. Hospitals and doctors were sometimes hard to find, expensive, and could be more dangerous than even the shady nostrums. The depressive conditions in the south and the influx in poor immigrants in the north strengthened the need for quick and cheap fixes. Many of the patent medicines of the time were said to be cures for stomach maladies. These were especially popular because of the poor quality of packaged foods coming from the factories.<sup>15</sup>

Pemberton was not the first to add carbonated or soda water to his tonic. In fact, carbonated water has been used as an antidote for diverse ailments since Roman times. In the United States, however, the medicinal benefit of the soda fountain was first introduced by Joseph Priestly in 1767 with his "fixed air," and Eugene Roussel added flavors to soda water in 1839 in his Philadelphia perfume shop. Charles Hires, a Quaker from Philadelphia, began advertising his Hires Root Beer in 1876, making it America's first soft drink. In 1885, the same year as Coca-Cola's debut, Charles Alderton, in Texas, created a cherry fountain drink which he called Dr. Pepper.<sup>16</sup>

<sup>12</sup> Pendergrast, 23.

<sup>13</sup> Pendergrast, 26 and Drugs.com, "Damiana Medical Facts from Drugs.com," Drugs.com, <http://www.drugs.com/mtm/damiana.html> (accessed December 1, 2009).

<sup>14</sup> Pendergrast, 21.

<sup>15</sup> *Ibid.*, 12.

<sup>16</sup> *Ibid.*, 16.

### The Woman's Christian Temperance Union

Soon after French Wine Coca started to gain popularity, especially in Atlanta, it suffered its first major setback. Beginning on July 1, 1886 and running until May 1, 1887, Atlanta became the first major U.S. city to place a ban on alcoholic beverages. For Pemberton this was a potentially ruinous problem. Not only was the basis of his tonic alcohol, but the cocaine that he was peddling began getting scathing criticisms in the newspapers, magazines, and church services as an evil, just like alcohol, that was destroying the moral fiber of America.<sup>17</sup>

The temperance movement, and especially the Woman's Christian Temperance Union (WCTU), was a thorn in the side of the fledgling Coca-Cola Company. Even though the "WCTU without question, in most respects, proved to be one of the greatest moral forces in social reform that the world has ever seen,"<sup>18</sup> it was one aspect of a broader movement. The temperance movement can trace its American roots back as early as 1607 to relations with the Native Americans.<sup>19</sup>

The WCTU, which was organized in 1873, was the first time that women were allowed or, at least, acknowledged as leaders in the main stream temperance movement.<sup>20</sup> It was in large part the WCTU that pressured some Georgia counties, including Fulton county, the home of Atlanta, to adopt a prohibition experiment during its second wave of state-wide prohibition drives. The first had taken place in the 1850s and had been run by male-dominated unions. This second drive ended with only three states staying dry until national prohibition in 1920.<sup>21</sup>

The WCTU's aims were lofty, but their ability was proven when national prohibition, their grandest ambition, became a reality in 1920. However, this was a long road for the temperance unions. From praying that saloons would be closed to fiery sermons by evangelists to protest marches to governmental lobbying, the WCTU used various strategies to accomplish its goals. Its driving ambition was to make a society that was free from the evils of liquor and addictive narcotics, like the cocaine in Pemberton's drink.<sup>22</sup>

Opposition from the WCTU was not Pemberton's first warning that there would be troubles with his recipe. Although Pemberton was aware of the WCTU's ambitions earlier, in June 1885 a clear-cut article appeared in

<sup>17</sup> Ibid., 28.

<sup>18</sup> Cherrington, Ernest H., *The Evolution of Prohibition in the United States of America* (Westerville: The American Issue Press, 1921), 176.

<sup>19</sup> Ibid., 9.

<sup>20</sup> Ibid., 176.

<sup>21</sup> Ibid., 176.

<sup>22</sup>National Woman's Christian Temperance Union, *Report of the National Woman's Christian Temperance Union Thirty-Sixth Annual Convention* (Evanston, Illinois: Woman's Christian Temperance Union, 1909), 130.

the *Atlanta Constitution* about the evils of cocaine: "the injudicious use of cocaine will make a man more brutal and depraved than either liquor or morphine. Herein lies a new danger. Before long a remedy will be demanded for the cocaine habit."<sup>23</sup>

Pemberton himself was a morphine addict<sup>24</sup> and saw no problem with the new cocaine because it was more psychologically than physically addicting.<sup>25</sup> In an advertisement run in the *Atlanta Constitution* in June of 1885 Pemberton wrote:

Americans are the most nervous people in the world... All who are suffering from nervous complaints we commend to use that wonderful and delightful remedy, French Wine Coca, infallible in curing all who are afflicted with any nerve troubles, dyspepsia, mental and physical exhaustion, all chronic and wasting diseases, gastric irritability, constipation, sick headache, neuralgia, etc. is quickly cured by the Coca Wine. If has proven the greatest blessing to the human family, Nature's (God's) best gift in medicine. To clergymen, lawyers, literary men, merchants, bankers, ladies, and all whose sedentary employment cause nervous prostration, irregularities of the stomach, bowels and kidneys, who require a nerve tonic and a pure, delightful diffusible stimulant, will find Wine Coca invaluable, a sure restorer to health and happiness. Coca is a most wonderful invigorator of the sexual organs and will cure seminal weakness, impotency, etc., when all other remedies fail. To the unfortunate who are addicted to the morphine or opium habit, or the excessive use of alcoholic stimulants, the French Wine Coca has proven a great blessing, and thousands proclaim it the most remarkable invigorator that ever sustained a wasting and sinking system.<sup>26</sup>

The attacks that Dr. Pemberton was fighting off were not only against the medicinal aspect of French Wine Coca, but it was around this same time that Pemberton and his newly acquired business partners were formulating a French Wine Coca, now under the familiar title Coca-Cola,

<sup>23</sup> Pendergrast, 28.

<sup>24</sup> Ibid., 8.

<sup>25</sup> Webmd.com, "Cocaine Use and Its Effects," Webmd.com, <http://www.webmd.com/mental-health/cocaine-use-and-its-effects?page=2> (accessed December 9, 2009).

<sup>26</sup> Advertisement, *Atlanta Constitution*, June 14 and 18, 1885.

that was sold in the popular soda fountains.<sup>27</sup> This formula change was the absence of alcohol and addition of sugar among other small changes.<sup>28</sup>

During the noble experiment of Atlanta prohibition, French Wine Coca was still widely produced and sold, but with increasing animosity towards the added cocaine and caffeine. These same issues proved fatal for many of Pemberton's competitors and contemporaries, leading to a genuine concern for the future of French Wine Coca. However, by this time it and the newly adapted formula, Coca-Cola, were gaining national attention and sales were rising. By 1887, French Wine Coca was selling 720 bottles a day while, by some estimates, the new Coca-Cola sold around 600 gallons (76,800 drinks) in the weeks before May 1<sup>st</sup> of the same year.<sup>29</sup>

With the new formula void of alcohol, the WCTU's onslaught died down temporarily and gave the company a chance to regroup. In 1889 Asa Candler, an Atlanta druggist, took control of the company as the sole proprietor.<sup>30</sup> Candler's first addition to Coca-Cola was formula 7X which he instigated as the one and only secret recipe for Coca-Cola. Each batch was taste-tested before it left the factory and even the bottles that contained the ingredients to 7X were left unlabeled. Only Candler and his sons knew how much of each unmarked ingredient was to be used. Candler himself was the only one who knew the contents of the bottles.<sup>31</sup>

Although this romantic story makes for a great tale, its practice was short lived. In 1901 and 1902 the Coca-Cola Company was involved in two lawsuits against the Internal Revenue Service that served to aid the grand aims of the WCTU. In the first case against H.A. Rucker, the IRS Tax Collector, the Coca-Cola Company sued for reparations of \$10,858.76 in revenue stamps it had been forced to put on its products during the Spanish-American War.<sup>32</sup> The second trial, a year later, was under a similar premise. This time, however, Coca-Cola was asking for \$39,500 that it had paid in taxes when Rucker determined that Coca-Cola was a proprietary medicine and should thus pay the proprietary medicine war revenue tax.<sup>33</sup> Both cases ended in mistrials.<sup>34</sup>

During the case, Rucker explained his reasons for giving Coca-Cola the classification of proprietary medicine. He claimed that the Coca-Cola formula manufactured in 1902 was different from the formula of 1899, when

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<sup>27</sup> Pendergrast, 32.

<sup>28</sup> Ibid., 29.

<sup>29</sup> Ibid., 34.

<sup>30</sup> Ibid., 55.

<sup>31</sup> Ibid., 60-61.

<sup>32</sup> "Trial of Coca-Cola Case,," *Atlanta Constitution*, June 11, 1901.

<sup>33</sup> "Coca-Cola Case Is Postponed,," *Atlanta Constitution*, January 27, 1903.

<sup>34</sup> The 1901 case went to jury where one jurist stood for the government. The second trial was declared a mistrial by Judge Newman stating that the matter should have been taken to Washington instead of aimed at Rucker. See *Atlanta Constitution* "Coca-Cola Case Is Postponed" January 27, 1903.

Coca-Cola was paying the tax.<sup>35</sup> As a result, lab tests were completed on Coca-Cola to check the amounts of cocaine and especially caffeine in the beverage. During his testimony in the first trial, Asa Candler admitted that there was indeed a "very small proportion" of cocaine in Coca-Cola. At some point during this first trial the accumulation of negative testimony, adverse press coverage, and the spread of Coca-Cola among black consumers, who were rumored to become violent and riotous after consuming it, forced Candler to remove the cocaine from the recipe.<sup>36</sup> It was Rucker's argument in the second trial that the caffeine still found in the formula was medicinal in the raw form being used in Coca-Cola.<sup>37</sup> Although the information presented in the court showed that Coca-Cola had only changed its advertising to avoid the war tax, the southern court was hung against the northern freed slave, Rucker, with only one vote holding out for Rucker.<sup>38</sup> Coca-Cola would recover the \$12,900 it had paid in this tax.<sup>39</sup> In December of 1902, the Georgia legislature made the sale of cocaine in any form illegal. By luck, grace, or good judgment, Coca-Cola once more narrowly escaped disaster, though the controversy over the drink was not finished.<sup>40</sup>

The last fiery dart the WCTU aimed at Coca-Cola came in 1929 when Mrs. Martha M. Allen, the chair of the Medical Temperance Department of the Women's Christian Temperance Union working in connection with Dr. Harvey Wiley, the first commissioner of the U.S. Food and Drug Administration, summoned up testimony from the 1901 IRS mistrial of the Coca-Cola Company. Using this information Allen and Wiley petitioned the Surgeon General to ban Coca-Cola from use by America's fighting men. The information given by the Surgeon General stated, inaccurately, that Coca-Cola contained 2% alcohol and a small amount of cocaine. In June of 1907, Coca-Cola was banned from the Army.<sup>41</sup> This ban did not last long, however, as the army rescinded it in November of the same year when an analysis of the beverage turned up no trace of cocaine of other injurious drug.<sup>42</sup> Even though this was a public relations nightmare for Coca-Cola, American sales did not waver.<sup>43</sup> After this defeat, the WCTU would bow out of the history of Coca-Cola.

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<sup>35</sup> Ibid.

<sup>36</sup> Pendergrast, 90.

<sup>37</sup> "Coca-Cola Case Postponed"

<sup>38</sup> Roger M. Grace, "U.S. Draws Suit Over Taxation of Coca-Cola as Medicine" *Metropolitan News-Enterprise*, January 26, 2009.

<sup>39</sup> "Uncle Sam Loses in Lengthy Suit" *Atlanta Constitution*, October 22, 1902.

<sup>40</sup> Pendergrast, 91.

<sup>41</sup> Ibid., 114.

<sup>42</sup> "To Allow Sale of Coca-Cola,," *Atlanta Constitution*, November 1, 1907.

<sup>43</sup> Pendergrast, 114.

### Dr. Harvey Washington Wiley

Dr. Harvey Washington Wiley was the company's next temperance-related public relations opponent, and at the turn of the century he was a very powerful force. Wiley was born in 1844 in Indiana and rose from humble beginnings to become "one of the most engaging figures in American public life in his day."<sup>44</sup> Schooled at Hanover College and Harvard's Lawrence Scientific School, battled against the South in the Civil War, and born with a religious vigor, Wiley worked his way through the government to become the Chief of the Bureau of Chemistry under the Department of Agriculture and the father of the Pure Food and Drug Act of 1906, universally known as "Dr. Wiley's Law."<sup>45</sup>

Dr. Wiley had spent his career crusading against additives in foods. His monthly articles in *Good Housekeeping* magazine ranged from bleaching of flour, alum in baking powder, and swindling in diet pills and tonics.<sup>46</sup> *Good Housekeeping* also ran a page entitled "Dr. Wiley's Question-Box" in which Dr. Wiley answered readers' questions on any and all subjects. Their questions ranged from checks on ingredients in foods to why cream wouldn't whip properly.<sup>47</sup> These were all answered professionally and intelligently by Wiley. When it came to Coca-Cola it was, ironically, not the trace amounts of cocaine in Coca-Cola that so fired up Wiley, but the caffeine.<sup>48</sup>

His concerns over the caffeine in Coca-Cola were two-fold. First, he believed that any and all additives were harmful to the body. This is shown time after time in his *Good Housekeeping* articles. He is constantly telling his readers to do as much of their cooking and preparing at home as possible. Wiley does give his approval to a few over-the-counter medications and prepared food items, but very infrequently. The editors of *Good Housekeeping* magazine must have shared his views or recognized that his presence in the magazine was far too great to compromise as their advertising selection shows. Advertisements for cleaning products, grain based cereals such as Kellogg's Bran, and very basic personal care products fill the pages and show a noticeable lack of the shady nostrums on the market of the day.

Wiley's second concern came directly from the Coca-Cola advertisements that are also conspicuously missing from *Good Housekeeping*, but are rampant in other magazines, including *Collier's*. It was these

<sup>44</sup> "Dr. Harvey W. Wiley," *New York Times*, July 2, 1930.

<sup>45</sup> Pendergrast, 111 and Oscar E. Anderson, Jr., *The Health of a Nation: Harvey W. Wiley and the Fight for Pure Food* (Chicago: University of Chicago Press, 1958), 1-15 and 67.

<sup>46</sup> *Good Housekeeping*, 1906-1921.

<sup>47</sup> *Good Housekeeping*, 1906-1921.

<sup>48</sup> Benjamin, Ludy T., Anne M. Rogers, and Angela Rosenbaum, "Coca-Cola Caffeine, and Mental Deficiency: Harry Hollingworth and the Chattanooga Trial of 1911," *Journal of the History of Behavioral Sciences* 27 (January 1991): 42-55.

advertisements that concerned and angered Wiley because he believed that statements such as "Delicious and Refreshing" and "Revives and Sustains"<sup>49</sup> were fraudulent and did not mention that the added caffeine was harmful. Then again, there were not, at the time of this charge, accurate studies on the effects of caffeine.<sup>50</sup> Almost more maddening to Wiley, however, was Coca-Cola's use of advertising that depicted children consuming the beverage<sup>51</sup> and the tickets given out to people of all ages for free drinks at local soda fountains.<sup>52</sup>

Wiley's first attempt, in conjunction with the WCTU, to stamp out Coca-Cola proved to no avail when the army rescinded the ban he had fought to have placed on the beverage. Things had barely calmed down for Coca-Cola from the fight with the army ban when Wiley received permission from his directors at the Department of Agriculture in Washington D.C. to pursue Coca-Cola under the act popularly attributed to Wiley. The Food and Drug Administration seized forty barrels and twenty kegs of Coca-Cola as it crossed state lines from Georgia to Tennessee and charged that it contained a deleterious ingredient, namely, caffeine.<sup>53</sup>

The Pure Food and Drug Act was signed into law in on June 29, 1906. This act is legislation for "preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes."<sup>54</sup> The act enabled the Department of Agriculture, along with other agencies, to make uniform rules and regulations regarding additives, branding and food safety and to collect and examine the products being sold in any state other than that to which it was manufactured. Once collected, the act called for the Bureau of chemistry in the Department of Agriculture to test the product for harmful substances and mislabeling.<sup>55</sup> This placed the Pure Food and Drug Act squarely in the purview of its founder, Wiley as Chief Chemist for the Bureau of Chemistry.

Wiley hoped to catch Coca-Cola in violation of the act due to its addition of caffeine and coloring which adulterated the product as well as misbranding because it contained no coca and little, if any, cola<sup>56</sup> which was

<sup>49</sup> Beverage World, *Coke's First 100 Years...And A Look Into The Future* (Shepherdsville, KY: Keller International Publishing Corporation, 1986).

<sup>50</sup> Benjamin, 42.

<sup>51</sup> Young, James Harvey, "Three Atlanta Pharmacists," *Pharmacy in History* 31, no. 1 (January 1989): 20.

<sup>52</sup> Pendergrast, 180.

<sup>53</sup> Benjamin, 42.

<sup>54</sup> *Pure Food and Drug Act of 1906*, US Statutes at Large, 59th Congress, Session I, Chapter 3915. p 768-772.

<sup>55</sup> Ibid.

<sup>56</sup> Coca in the title implied the Coca plant, or the cocaine present in the formula and kola was in reference to the kola nut from which the caffeine was

the basis for the title Coca-Cola and the pictures on the label.<sup>57</sup> Coca-Cola quickly claimed liability for the forty barrels and twenty kegs and stated that the name Coca-Cola was a trademark under which people were familiar with the product they were receiving. They did, however, admit that caffeine was added to the beverage.<sup>58</sup>

The trial, held in Tennessee in 1911, resulted in a victory for Coca-Cola in two regards. First, Judge Edward Sanford stated that because people traditionally thought that caffeine was in Coca-Cola it was not an additive. In his ruling he wrote:

So an article of food which is not sold under a distinctive trade name but under a well recognized name that has acquired a distinct meaning in general popular usage, as for example, sausage, cannot be deemed adulterated within the meaning of the Act, however deleterious to health some of its normal ingredients may be, provided that as manufactured and sold it does not contain any other poisonous or deleterious ingredients, added to its normal and customary constituents.<sup>59</sup>

Judge Sanford's ruling interpreted the Pure Food and Drug Act's section of harmful foreign additives as anything uncharacteristic to the food as commonly understood by the general public. Therefore, because the consumer understood that Coca-Cola contained caffeine it was not an additive even though it could be injurious to one's health.

Coca-Cola's second victory in the trial came through its own preparation. Coca-Cola lawyers realized that there was not sufficient scientific evidence on the effects of caffeine, so they hired their own psychologist to commence studies. Harry Hollingworth's study was the first truly scientific caffeine study, and included control groups, placebos, and blind and double-blind techniques. When Hollingworth took the stand to report his findings, Coca-Cola was delighted to hear that the only negative effects of caffeine he found were perhaps poor sleep quality after large quantities were consumed. Coca-Cola was probably even more delighted when Hollingworth testified that caffeine was scientifically proven to increase motor performance rapidly and cognitive performance slowly but more persistently.<sup>60</sup>

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drawn. The caffeine present in Coca-Cola was, by this time, taken from tea leaves and not from the kola nut.

<sup>57</sup> United States v. Forty Barrels and Twenty Kegs of Coca-Cola, 191 F.431 (E.D. Tenn. 1911).

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Benjamin, 48.

With this loss in Tennessee, the United States appealed to the Sixth Circuit Court of Appeals but the ruling of the lower court was upheld.<sup>61</sup> The appeal reached the Supreme Court of the United States in 1916. In the opinion, written by Justice Charles Evans Hughes, caffeine was an additive to Coca-Cola; however, its harmfulness would need to be the basis of another legal challenge.<sup>62</sup> He overturned the verdict of the lower court in the second charge; misbranding. He stated that in handing down the verdict in the original trial, Judge Sanford interpreted the Pure Food and Drug Act incorrectly. The second count, the misbranding of Coca-Cola, was found by the lower court to be a "well recognized name that has acquired a distinct meaning in general popular usage."<sup>63</sup> However, Justice Hughes stated

In the present case we are of opinion that it could not be said as matter of law that the name was not primarily descriptive of a compound with coca and cola ingredients, as charged. Nor is there basis for the conclusion that the designation had attained a secondary meaning as the name of a compound from which either coca or cola ingredients were known to be absent; the claimant has always insisted, and now insists, that its product contains both. But if the name was found to be descriptive, as charged, there was clearly a conflict of evidence with respect to the presence of any coca ingredient.<sup>64</sup>

Although Coca-Cola was clear of any adulterated additives, it was not, as Judge Sanford had written, its own distinct compound. Coca-Cola was, therefore, not its own food category and its product was not well known enough for the public to understand its complete compound. The insalubrious nature of caffeine was still to be determined.

In a subsequent case Coca-Cola entered a plea of *nolo contendere*.<sup>65</sup> This "no contest" plea was based on its recent formula change in which the caffeine was cut in half from the 1909 recipe when the forty barrels and twenty kegs were seized. Coca-Cola was also ordered to pay \$85,000 in court costs.<sup>66</sup>

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<sup>61</sup> United States v. Forty Barrels and Twenty Kegs of Coca-Cola, 215 F.535 (6<sup>th</sup> Cir. 1914).

<sup>62</sup> United States v. Forty Barrels and Twenty Kegs of Coca-Cola, 241 U.S. 265, 36 S.Ct. 573 (1916).

<sup>63</sup> United States v. Forty Barrels and Twenty Kegs of Coca-Cola 191 F.431 (E.D. Tenn. 1911).

<sup>64</sup> United States v. Forty Barrels and Twenty Kegs of Coca-Cola, 241. U.S. 265, 36 S Ct. 573 (1916).

<sup>65</sup> Benjamin, 51.

<sup>66</sup> Ibid., 51

When Dr. Wiley had exhausted his legal resources and had been shot down by the high court, he, like the WCTU, bowed out and moved on to another battle; alcohol. As his response from "Dr. Wiley's Question-Box" shows, although he had to keep his hands off Coca-Cola, he was not giving it his approval.

#### COLLIER'S AND COCA-COLA

I see *Collier's* has a full page advertisement of Coca-Cola in its last issue. They carried a similar advertisement some ten months ago. It is a pity something can't be done to stop the wholesale use of Coca-Cola since the Supreme Court has overruled the lower courts' decisions in its favor.

J.B.C., Missouri

It pains me to see so good a journal as *Collier's* carry an advertisement of Coca-Cola, a product deemed a misbranded article by the Supreme Court, which overruled all of the contentions made by the lower court, and court of appeals. *Collier's* is doing splendid work against the alcohol evil. In giving Coca-Cola publicity it is helping to promote the introduction of an evil which, though not so great, is still one much to be feared.<sup>67</sup>

Wiley had one last Coca-Cola entry in *Good Housekeeping* entitled "The End of the Coca Cola Case," in which he wrote, after revealing Coca-Cola's "secret formula":

The evidence given at the trial in Chattanooga disclosed that serious injury is produced in many cases by its use...It was stipulated that this decree of condemnation should not apply to subsequent products of the Coca-Cola Company and that the formula for the manufacture of Coca-Cola has been changed. I have lately seen an advertisement in which it was claimed that the quantity of sugar in the Coca-Cola sirup has been diminished about one-half as a patriotic measure."<sup>68</sup>

From these comments Dr. Wiley's tone is fairly clear. Although Coca-Cola was out of the legal doghouse, he was unconvinced of Coca-Cola's wholesomeness. Some of Wiley's opponents believed that his pursuit of the Coca-Cola Company was revenge against the South from whence had come the largest congressional opposition to the passage of the Pure Food and

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<sup>67</sup> Dr. Harvey Wiley, Dr. Wiley's Question-Box, *Good Housekeeping*, November 1916, 94.

<sup>68</sup> Dr. Harvey Wiley, Dr Wiley's Question-Box, *Good Housekeeping*, July 1918, 94.

Drug Act.<sup>69</sup> However, Wiley's reputation on the need to eliminate harmful additives in food was clearly documented through his published writings and Coca-Cola became one of his many targets. In an article in 1912 for *Good Housekeeping*, Wiley wrote

...stimulation means increased exertion.... All increased energy implies increased consumption of tissue and fuel. Fatigue is nature's danger signal, to show that muscles, brain, nerves, et cetera, need rest and recreation. Any drug that strikes down the danger signal without removing the danger must of necessity be a threat. The thing to do when one is tired is to rest, to sleep, and to take real food. The thing not to do is to take a drug that makes one forget he is tired.<sup>70</sup>

It is understandable that he would have been infuriated by the Coca-Cola Company for advertising its product as "Invigorating" and "The Ideal Brain Tonic."<sup>71</sup>

#### Coca-Cola in Court

Through legal challenges and bad press, in thirty years Coca-Cola had gone from a "patent medicine," to a soda fountain drink laced with cocaine and caffeine, to a mild stimulant void of alcohol, cocaine, or excessive amounts of caffeine. The Coca-Cola of 1916 looked very much like the Coca-Cola of today and owes its life-saving formula changes to its early debate with the WCTU over alcohol and cocaine and Dr. Wiley over the addition of caffeine and sugar.

Even with all of the formula changes and legal dealings, there was still one last issue inspired by the temperance movement's crusade for a drug free America and the Pure Food and Drug Act which would involuntarily propel Coca-Cola into the indestructible corporation of today: formal and informal trademark.

The Pure Food and Drug Act states that "articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced" are not misbranded.<sup>72</sup> It was this distinctive name that Coca-Cola was interested in keeping clean because imitators using the de facto trademarks could again throw Coca-Cola, inadvertently, into contention with the Wiley's Bureau of Chemistry and Department of Agriculture. Throughout its early years under Asa Candler,

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<sup>69</sup> Benjamin, 44.

<sup>70</sup> *Ibid.*, 45.

<sup>71</sup> Young, 19.

<sup>72</sup> *Pure Food and Drug Act*, 1906.

Coca-Cola had fought intensely for its product to only be sold under the genuine title Coca-Cola. The company had gone so far as to hire the famous Pinkerton Detectives to order Coca-Cola, by name, at local soda fountains and bring the drink back to the laboratory for chemical property tests to prove it was actually Coca-Cola.<sup>73</sup>

In 1914 Harold Hirsch, Coca-Cola's passionate and successful young lawyer, brought a suit against J.C. Mayfield, an old partner of Pemberton's, for trademark infringement. This was, however, a change in the traditional trademark policy of Coca-Cola. This case was over the popular terms and names for Coca-Cola and its ability to informally claim a trademark. Soda fountain attendants were called to testify that "Koke" and "Dope," the names of Mayfield's beverages, among other titles, were universally recognized as being Coca-Cola.<sup>74</sup>

[O]n February 24, (1919) the Court of Appeals ruled in favor of J.C. Mayfield, citing the doctrine of "unclean hands." The decision held that Coca-Cola had no rights whatsoever, since it had once contained "the deadly drug cocaine." In addition, most of the caffeine in the drink had always come from tea leaves, not the kola nuts. Thus, the court found that Coca-Cola had engaged in "such deceptive, fast, fraudulent, and unconscionable conduct as precludes a court of equity from affording it any relief...Coca-Cola Co. is utterly helpless from imitators...."<sup>75</sup>

Because of Coca-Cola's checkered past, mostly involving the contests with the WCTU and Dr. Wiley, Coca-Cola held no legal claim to any popular or street names associated with its product. Coca-Cola appealed the decision and was heard by the Supreme Court in 1920. This time Coca-Cola would benefit from the ruling. In an opinion written by Justice Oliver Wendell Holmes Jr., he proclaimed that "Koke" (and variations) were as much a part of the trademark of Coca-Cola as the name itself.

The name now characterizes a beverage to be had at almost any soda fountain. It means a single thing coming from a single source, and well known to the community. It hardly would be too much to say that the drink characterizes the name as much as the name the drink. In other words 'Coca-Cola' probably means to most persons the plaintiff's familiar product to be had everywhere rather than a compound of particular substances....it has acquired a secondary meaning

<sup>73</sup> Pendergrast, 105.

<sup>74</sup> Ibid., 125.

<sup>75</sup> Ibid., 131.

in which perhaps the product is more emphasized than the producer but to which the producer is entitled.<sup>76</sup>

All imitators using variations of "Coke" would be in violation of Coca-Cola's trademark. This was a huge win for the Coca-Cola Company and its lawyer, Hirsch, who during the 1920's "virtually created modern trademark law, filing an average of one case per week."<sup>77</sup>

This decision also secured that Coca-Cola would be cleared of any issues in misbranding, injurious additives, or unhealthy formulas under the Pure Food and Drug Act from competitors trying to imitate Coca-Cola.

### Conclusion

Before Coca-Cola could claim a complete victory over its connections with alcohol, cocaine, excessive caffeine, and misbranding and trademarking issues coming from competitors there would be one more mudslinging episode, this time from the floor of the Senate. The Democratic senator from Georgia, Tom Watson, exclaimed,

An addict who consumes from fourteen to twenty bottles of the stuff every day is no uncommon case. I have had the best doctors in the State of Georgia tell me that Coca-Cola destroys...the brain power and the digestive power and the moral fabric and that a woman who becomes an addict to it loses her divine right to bring children into the world.<sup>78</sup>

No one paid him any attention. As he spoke, Coca-Cola was finishing up its victory in the debates with the temperance movement and Dr. Wiley and securing its name and trademark. Throughout the next ten years Coca-Cola sales would increase despite the prediction that the end of prohibition would be the end of the soft drink industry. Coca-Cola, surprisingly, would continue to grow throughout the Great Depression as a testament to its advertising campaigns.<sup>79</sup>

Throughout the next two decades Coca-Cola would funnel all of its energies into legally eliminating competitors and advertising to the American people that it was the perfect beverage for everyone, anytime of the year, and for any activity. Coca-Cola's most recognized advertisement came in 1931 when Haddon Sundblom drew Santa Clause, in bright Coca-Cola red, enjoying a cold Coke.<sup>80</sup>

<sup>76</sup> Coca-Cola Co. v Koke Co. of America et al, 254 U.S. 143, 41 S.Ct. 113 (1920).

<sup>77</sup> Pendergast, 105.

<sup>78</sup> Ibid., 162.

<sup>79</sup> Ibid., 176.

<sup>80</sup> Ibid., 181.



When the *New York Times* declared that Coca-Cola was no longer to be publically persecuted, it lacked the foresight to know that it was already over its largest obstructions. The WCTU, Dr. Wiley, the IRS, and imitators had fought with and lost to Coca-Cola. Because of these battles, Coca-Cola, armed with a new, tested formula, legal precedence, and an experienced public relations team was stable, experienced, and prepared for the future. Had it never had these confrontations it would have gone down amongst nostrums like Lezajskie Lecznicze Wine Elixir and XXX Tonic Pills<sup>81</sup>

On December 7, 1941, when the Japanese bombed Pearl Harbor, Coca-Cola was engrained as a part of American society. During WWII, Dwight Eisenhower told a congressional committee that more soldiers surveyed wanted Coca-Cola than beer. It was Coca-Cola that helped to remind the G.I.'s what they were fighting for.<sup>82</sup> The next market for Coca-Cola would be the international one to which they had already secured a foothold by 1941, but more importantly, Coca-Cola was ready for whatever lay ahead.

## Caped Culture: A Brief Historiography of Comic Books in America

Wade Derek-Thomas Ellett

*Wade Ellett wrote "Caped Culture" in the fall semester of 2008 for Dr. Jonathon Coit's History 5320, 20th Century American Cultural and Social History. Wade hails from Mattoon, Illinois, and completed his Bachelor of Arts in History with a Minor in Medieval Studies at EIU in 2006, and completed his Master of Arts focusing on American Cultural History at EIU in the spring of 2010. Since graduating he has been researching potential PhD programs, reading a lot of comics, and acting as an amateur superhero.*

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In 1989 Joseph Witek released *Comic Books as History*, a review of the comic books of Jack Johnson, Art Spiegelman, and Harvey Pekar. These comic book creators crafted works that were, "written as literature aimed at general readership of adults and concerned, not with the traditionally escapist themes of comics, but with issues such as the clash of cultures in American history, the burdens of guilt and suffering passed on within families, and the trials and small triumphs of the daily workaday world."<sup>1</sup> These comics, differing from perhaps the majority; they are serious discussions of the world.<sup>2</sup> Then again, are these comic books that different from their predecessors? Since the emergence of underground comics in the 1960s and of alternative comics in the 1970s, more and more writers and artists have chosen to express themselves in comic books, while the medium itself has reached for wider cultural acceptance.<sup>3</sup> That being the case, who is to say that comic books, since their creation, have not been making statements, in some form or another, about the United States? Comic books only became recognized as a respected literary form in the 1980s, but that does not mean that they have not been worthy of respect for a lot longer<sup>4</sup>

This paper examines the various views of comic books, and the arguments that circle around them. There are many different viewpoints, but none that seem to think that comic books are not worthy of study. They have, after all, been circulated for the better part of a century, and have represented a number of genres from horror to science-fiction, humor to romance, crime to the beloved superhero. The various historians and writers disagree on many points, but they all agree that comic books say

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<sup>1</sup> Joseph Witek, *Comic Books as History: The Narrative Art of Jack Jackson, Art Spiegelman, and Harvey Pekar*

(Jackson: University Press of Mississippi, 1989), 3.

<sup>2</sup> *Ibid.*, 4.

<sup>3</sup> *Ibid.*, 5.

<sup>4</sup> *Ibid.*, 11.

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<sup>81</sup>American Medical Association, 171 and 217.

<sup>82</sup> Brands, H.W., "Coca-Cola Goes To War," *American History* (August 1999), 31.