

# Sentence Of 'Health' Lecturer For FDC Act Violation Upheld

BOSTON—Conviction of a "health food" lecturer on charges of violating the Food, Drug and Cosmetic Act by selling misbranded vitamin and mineral products has been upheld in a unanimous decision of the U. S. Circuit Court of Appeals here.

In an opinion by Chief Judge Calvert Magruder, the court said it found "no error" in a finding of

guilty by a district court jury after a three-week trial. The guilty verdict was turned in on all six counts of an information charging V. E. Irons, Inc., and V. Earl Irons with misbranding. The lower court fined the company \$1,000 on each count and Mr. Irons was sentenced to one year in jail on each count, with sentences to run concurrently.

(Wallace F. Janssen, assistant to

the commissioner, Food and Drug Administration, said in Washington that the Irons decision "is an important milestone in FDA's drive to stop exaggerations of the therapeutic worth of food supplements.")

The Irons case involved products distributed under the name 'Vita-Ra-Tox.' One product, the court said, contained raw veal bone, defatted wheat germ and concentrate of the juices of young, green cereal shoots. Another contained a garlic derivative, wheat germ and lecithin as an emulsifier, the court stated.

FDA contended the products were misbranded because they failed to comply with its dietary food regulations requiring label statements of vitamin and mineral properties and because false claims were made in literature and in lectures by Mr. Irons.

As illustrative of the claims called false by FDA the court cited one statement that "nearly everyone in this country is suffering from malnutrition or in danger of such suffering because of demineralization and depletion of soils and the refining and processing of foods."

## Effect Of Claims Pertinent

"In determining whether label statements are false and misleading we must be careful not to read the literature with the eyes either of experts in nutrition or of overly skeptical buyers," the court said.

"What is pertinent is the effect the claims would have on those to whom they are addressed, namely, prospective purchasers and actual customers who cannot be presumed to have special expertness or to be unduly cautious, but who are more likely than not to be persons who are pathetically eager to find some simple cure-all for the diseases with which they are afflicted or who are susceptible to luridly painted scare literature as to the prospect of being disease-ridden unless they consistently partake of the vaunted drug product."

This is Drug Trade News of June 3, 1957, with the story of the man who was sentenced to one year in jail and a fine of six thousand dollars for making this statement:

"Nearly everyone in this country is suffering from malnutrition or in danger of such suffering because of demineralization and depletion of soils and the refining and processing of food".

Dr. Harvey W. Wiley, the first head of the U. S. Food and Drug Administration lost his job in 1912 because he had similar opinions.

In 1930 he wrote a book on the way the "Food Law had been perverted to protect Adulteration of Foods and Drugs instead of to protect the health of the people".

On page 400 of that book in reviewing the way administrative officials REVERSED the intent of the Federal Courts in their phony enforcement activity, he said, "In all these cases judgments of the Court condemning the use of all these substances (alum, caffeine, sulfites, benzoate of soda, saccharine) were secured, but in no case was any effort ever made by enforcing officers to follow up the Court decision. By reason of this fact interstate commerce in foods containing bleached flour, benzoate of soda, sulphur dioxide, and sulphites, together with soft drinks containing caffeine, such as Coca Cola, go on unimpeded and unrestricted in all parts of the United States. The health of our people is constantly threatened by the use of these articles in our food".

It is a good thing Dr. Wiley is not alive today. He would no doubt be in the same jail as the victim above, for his statement is very similar. In his day the Federal Courts were honest. Today they have evidently been taken over by the flour bleachers caffeinated soft drink makers.

If you want to know more about this frightful perversion of the Federal Law by which the Federal Courts are now operating against the people, you need these two books:

1. Dr. Wiley's book of 1930, "The History of a Crime Against the Pure Food Law", reprinted by photolithography about food adulterators and food counterfeiters. 413 pages of facts. \$3.00
2. "The Legacy of Dr. Wiley" by Maurice Natenberg, 1957, 166 pages of information about this great man, whose integrity could not be corrupted by the Washington atmosphere, and whose memory is being "honored" by the issuance of a special commemorative postage stamp while men go to jail for promoting his policies. \$3.00

EITHER OR BOTH SENT ON APPROVAL.

(We recall that Bradshaw Mintener, legal mouthpiece for Pillsbury, was Executive Director of the Food and Drug Administration while this case was being cooked up). (See Chemical Week, page 26, Sept. 11, 1954 for details of his appointment).

There is a Federal law (see other side) that provides a \$5,000 fine and jail sentences for impairing the food value of any processed food — every pound of white flour and refined sugar violates this law — so you can see how important it is for the millers and refiners to control the FDA - or they would be in jail instead of Irons.

Order from:

R. LEE  
Box 267  
Elm Grove, Wis.

## [PENALTY IF COMMODITY IS INJURIOUS TO HEALTH]

[¶ 6134] Sec. 14.<sup>1</sup> (a) Any person, partnership, or corporation who violates any provision of section 12(a) shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than \$10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: Provided, That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act approved March 4, 1907, as amended, shall be conclusively presumed not injurious to health at the time the same leave official "establishments."

## [Liability of Advertising Medium]

(b) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement. [September 26, 1914, Chap. 311, Sec. 14, added March 21, 1938, Chap. 49, Sec. 4, 52 Stat. 114; 15 U. S. Code, Sec. 54.]

.01 Section 14 was added to the Act by the Wheeler-Lea amendment, Public Act No. 447, approved March 21, 1938. The section is discussed in the House Committee Report as follows:

"To cover the grosser cases of false advertising, in addition to existing penalties, it is provided in section 14 that where the advertisement is to induce the purchase of an article which may be injurious to health because of the result of such use, and also in cases where such advertisement is with intent to defraud or mislead, the offense shall be prosecuted as a crime and punishable by imprisonment for not more than 6 months or a fine of not more than \$5,000 or by both. For a second offense after a first conviction, the penalty is a fine of not more than \$10,000 or imprisonment for not more than 1 year or both.

"These criminal offenses will not be prosecuted by the Federal Trade Commission, but through the Department of Justice. The Commission will report the facts to the Attorney General for appropriate proceedings.

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"Disseminators of advertisements including publishers and radio broadcasters are afforded a proper exemption under section 14 (b) as to avoid unwarranted hardship on the person who has conducted his business with proper prudence."

The Conference Report discussed the conditions under which the penalties would attach as follows:

"The conference agreement restricts the penalties under this section to those cases where the injury may result from the use of the commodity 'under the conditions prescribed in the advertisement thereof or under such conditions as are customary or usual.' These words clearly include cases where injury may result from the use of the commodity as recommended in the advertisement or where it is used under customary or usual conditions. The section does not contemplate penalization in those cases where the use is not as recommended and is not under usual or customary conditions. It is not intended to extend to cases where there might be injurious results merely because of reactions of consumers due to their peculiar idiosyncrasies or allergic conditions."

.10 Penalties imposed.—A fine of \$1,000 was imposed upon John Petrie, trading as Purity Products Co. November 14, 1939, for violation of Section 14 of the Federal Trade Commission Act for false advertisement of feminine hygiene preparations. *U. S. v. Petrie* (DC Ill. 1939).

<sup>1</sup> Section 5 (b) of the amending Act of 1938 reads as follows:

"Sec. 5 (b). Section 14 of the Federal Trade Commission Act, added to such Act by section 4 of this Act, shall take effect on the expiration of sixty days after the date of enactment of this Act."