

Reversals of Fortune in the Tea Industry

Part XXX: Trademark Woes

WHITE HOUSE TEA

In all-tin packages, $\frac{1}{4}$ and $\frac{1}{2}$ lb. All-tin is the only tea package that retains the delicate tea aroma. All substitutes for tin are only substitutes, and allow the escape of the aroma and admit noxious odors. White House has that delicious "bouquet" that comes from expert blending of different kinds of tea and without which tea is a failure. The White House Brand Tea is always fresh, never stale, and is unvarying in flavor and "bouquet." Packed under perfect sanitary conditions. YOU try it! "The cup that cheers."

WHITE HOUSE COFFEE

A blend of the highest-grade coffees in the world, and our use of latest coffee machinery guarantees absolute uniformity. White House represents a lifetime of experience in selecting, roasting and blending coffee, and the all-tin can keeps in all valuable volatile odors and aroma and keeps out all noxious odors. For 20 years the standard and suits when others disappoint. National reputation and distribution - you can get White House Coffee anywhere. Stored and handled under perfect sanitary conditions. Put it to the real test - try it on your own table. One, two, three-pound tins. Never in bulk.

DWINELL-WRIGHT CO. Principal Coffee Roasters BOSTON-CHICAGO

An advertisement that appeared in *Hampton's Magazine*, 1910

Dwinell-Wright's *White House Tea* was one of the "well-known American package tea brands" listed by William Ukers in his 1935 publication, *All About Tea* (Volume 2). However, by the very next year, the company's fortunes were in rapid descent.

The original company was founded in 1845 by James F. Dwinell. In 1888, the company introduced *White House Coffee*, followed by *White House Tea* in 1907. A few years later it was discovered that a Wisconsin company was using a similar *White House* label for condensed milk. The issue was first ignored, but when The Great Atlantic & Pacific Tea Company made *White House Milk* their national brand, they could no longer ignore the trademark conflict.

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Reversals of Fortune in the Tea Industry, Part XXX

In Parts XXVIII and XXIX of our series, *Reversals of Fortune in the Tea Industry*, we discussed the introduction of *packet tea*, (a.k.a. *packaged tea*) to the tea markets of the United Kingdom and the United States. Packet tea solved a major problem of the time, which was the intentional adulteration of tea with foreign matter somewhere along the distribution chain. If pure tea went into the packet, pure tea would be sold to the customer.

However, as we saw with *He-No Tea*, there was no guarantee that pure tea always went into the packet in the first place. In that instance, the impurity of the product appeared to be intentional. Moreover, since much of the tea that arrived at port during the nineteenth century was already contaminated at source, only a tea expert could really tell how pure the packaged product was, even with the best of intentions. As stated by William Ukers:

During the 'eighties, large quantities of highly colored and grossly adulterated teas were shipped from Shanghai to New York and Boston. The volume of these shipments dumped on the market threatened the disruption of the legitimate trade. To put an end to such irregularities, an appeal was made to Congress to enact a law prohibiting the importation of teas that were either adulterated or unfit for consumption.

In 1883, Congress passed their first consumer protection bill, the *United States Tea Adulteration Act*, which required that all imported teas be held in bond until an expert could evaluate the integrity of the product. Several refinements to the original law were passed in subsequent years, all with the intention of improving the tea screening process and preventing contaminated, spurious, and unfit tea from entering the U.S. market.

Locally grown food quality was seldom an issue in rural America. However, increasing urban populations were often dependent upon anonymous remote sources for food. Upton Sinclair's best selling novel, *The Jungle*,

was published in 1905, and it became obvious that tea contamination was not the only food quality issue. It is no coincidence that Congress passed the *Pure Food and Drug Act* within the next year. A combination of government supervision and public awareness would rapidly force changes throughout the food industry, mostly for the better.

It did not take long before companies learned that brand image was integral to long term success. A brand with a favorable image can count on repeat sales and, in many cases, can justify a premium price. Often, a popular brand name like *Chase & Sanborn* (featured in our last issue), survives by acquisition long after the original company ceases to exist.

Trademarks are intended to provide consumers with an identifiable tag, or brand association, by which they can make purchase decisions based on the recognition of, and trust in, certain trademarks. Protection of a trademark's value requires careful attention to quality and customer satisfaction. A trademark can become a liability if it is associated with poor quality, and no amount of advertising can reinstate a sullied trademark.

There are state and federal trademark laws that protect companies from trademark abuse. The simplest form of trademark abuse is counterfeit merchandise. However, trademark law can get quite complicated, as we related in the dispute between Martin Gillet & Co. (owner of trademark *He-No Tea*) and C. D. Kenny, who introduced *Hi-Hi Tea* in packaging similar to that of *He-No Tea*. Martin Gillet & Co. won their case against C. D. Kenny, but lost on appeal when the judge ruled that Martin Gillet's trademarked packaging bore fraudulent claims.

A poorly selected trademark can be a trap, leading to unimaginable legal expenses. One example of a trademark trap is that of Dwinell-Wright Company, a former tea packing and coffee roasting company. The original Boston company was founded in 1845 by James F. Dwinell and operated under the name Dwinell & Company. George C.

Wright joined the company around 1857. Mr. Dwinell died in 1898, and a year later the company was renamed Dwinell-Wright. The following year, Mr. Wright became president.

In 1888, Dwinell introduced *White House Coffee*. Their official trademark was the words *White House*, appearing with a drawing of the Executive Mansion. *White House Tea* was introduced in 1907.

The *White House* trademark was successfully registered with the United States Patent Office in 1910. Sales of *White House Coffee* and *White House Tea* increased steadily, and within a decade the brand had nationwide following.

When George C. Wright died in 1910, he was succeeded by his son, George S. Wright. By now, Dwinell-Wright had become one of the leading suppliers of coffee and tea to independent grocers. To meet demand, a second production and distribution facility was opened in Chicago.

In 1920, the Chicago production manager of Dwinell-Wright discovered that a small company in Wisconsin was producing cans of evaporated milk, labeled *White House Milk*, with an illustration of the Executive Mansion, very similar to the Dwinell-Wright trademark.

CEO George S. Wright apparently considered this an insignificant issue, and he was quoted as saying the company would "probably die out." However, two years later, The

Great Atlantic & Pacific Tea Company acquired the White House Milk Company and invested \$1.5 million in capital improvements.

In 1927, one million cans of *White House Milk* were produced, and the following year, production was boosted by 50 per-cent! *White House Milk* became the house brand for A&P stores nationwide, and it was sold at a price that small independent grocers could not match with the name brands.

A&P was opening about three new stores every day in the 1920s. Nationally, the chain grew from 7,000 stores in 1923 to 17,500 stores a decade later.

Starting in 1929, A&P began promoting their *White House Milk* with an annual advertising budget of around \$45,000. They eventually became one of the top three producers of condensed milk in the entire world.

Rather than object to the use of *White House* in the A&P milk brand, Dwinell-Wright proposed that A&P jointly market and promote *White House Coffee* alongside *White House Milk*. They even offered A&P a 5 per-cent allowance toward joint advertising of the two products.

At first A&P refused to do this, preferring to highlight their own coffee brands. By 1930, A&P's *Eight O'Clock Coffee* was the most popular coffee in the nation, and their two other house coffee brands, *Red Circle* and *Bokar*, were

THRIFT

A&P 'A penny saved is a penny gained'

A&P Thrift Suggestions

Finest California

PRUNES
60/70 to the Pound 40/50 to the Pound
12¢ lb. 15¢ lb.

PINK SALMON tall can **11¢**

A&P COCOA 1/2 lb. can **15¢**
Unsurpassed for quality, flavor, smoothness and food value.

BAKER'S COCOA 1/2 lb. can **19¢**

5 L B S POTATOES **8¢**
Big Mealy Cookers

Del Monte Pineapple GRATED 1/2 can **19¢**

Del Monte Cherries Royal Anne 2 can **35¢**

Del Monte Pears 2 1/2 can **38¢**

Double-Tip Matches 5¢ bar
Palm Olive Soap 3 cakes **20¢**
Pacific Toilet Paper 5¢ roll

Sun Maid Seedless Raisins 15¢
Grandmother's Raisins 17¢
Old Dutch Cleaner 4¢
Quaker's Mother's Oats 10¢

Marshall's Tomato or Rippled Herring 2¢
Baker's Chocolate 8¢
A&P Premium Chocolate 16¢

GOLD MEDAL or HECKER'S FLOUR 3 1/2 lb. Bag **19¢**
A&P FLOUR 3 1/2 lb. bag **17¢**

Grandmother's **BREAD** 5¢
the Biggest Bread Value of the Hour

Supreme Coffee Values

BOKAR COFFEE 1/2 lb. **35¢**
Red Circle COFFEE 1/2 lb. **29¢**
8 o'Clock COFFEE 1/2 lb. **25¢**

THE GREAT ATLANTIC & PACIFIC TEA CO.
Over 7000 stores in the U.S.A.

A&P pioneered the concept of the store brand products. In this 1923 advertisement, their A&P brand cocoa is claimed to be "unsurpassed for quality, flavor, smoothness and food value." The customer could save more than 20 per-cent over the Baker's brand, which appears just below the A&P brand in the same advertisement.

taking additional market share. Dwinell-Wright persisted, and eventually got *White House Coffee* into every store of the A&P chain. This proved to be an empty victory for Dwinell-Wright.

Small, independent grocers were the bread and butter for Dwinell-Wright. But these same grocers saw A&P as their greatest threat. After all, A&P had put many small grocers out of business.

Feeling betrayed, many stores stopped selling *White House Coffee* and *White House Tea* altogether. As a minor brand for A&P, sales volume for *White House Coffee* was unable to compensate for the dwindling sales to the independent grocers. Dwinell-Wright was in trouble. In 1936, they took A&P to court, first trying to have A&P's *White House Milk* trademark invalidated, and eventually trying to collect damages. For the next five years legal expenses piled on, even as sales were slowing.

Dwinell-Wright had known about the *White House Milk* brand since 1920, and had not protested for sixteen years. Approaching A&P with a proposal for joint advertising further weakened their case. In the end, no damages were awarded, and A&P was allowed to continue marketing *White House Milk*, with a minor modification to their product:

...To alleviate so far as possible any existing confusion as to the origin of defendant's product the judgment shall contain a provision that the labels and advertising matter of the defendant, after present supplies are exhausted, where the words "White House" are used in association with a pictorial representation of the White House, shall have conspicuously printed thereon the following: "Not connected with any company using a similar name or brand".

Dwinell-Wright had gained nothing from their litigation, save perhaps extensive legal bills. With coffee and tea sales weakened, Dwinell-Wright decided to expand their *White House* product line. In December 1940, they introduced salted peanuts, and in May 1941, they added a blend of orange and grapefruit juice. New trademark problems surfaced almost immediately.

Virginia based National Fruit Product Company had registered a trademark consisting of the words *White House*, "whether accompanied by a representation of the Executive Mansion or not, in connection with the sale of fruit or vegetable juices for food purposes". Once again, Dwinell-Wright found themselves in court, this time as defendants.

Dwinell-Wright tried unsuccessfully to have National Fruit's trademark invalidated. The court also found Dwinell-Wright's juice blend to be infringing on National Fruit's *White House* trademark for juices. Dwinell-Wright was ordered to stop selling juice under the *White House* label.

One of the most important lessons to be learned here is that trademark infringement cases are strongest when action is taken promptly. Delays, especially lengthy delays, are judged to be indifference. Dwinell-Wright might exist today had they acted promptly to defend their trademark.

National Fruit Product Company is still an independent family-run operation, based in Virginia. Their products can be ordered online at www.whitehousefoods.com.

Just as the Dwinell-Wright litigation was coming to a close, A&P began losing market share to newer and larger supermarkets. Today, there are fewer than two dozen operating A&P stores. The long and painful story of how the once great A&P lost their greatness is documented in Mark Levinson's *The Great A&P and the Struggle for Small Business in America*.

Desperate for cash, the coffee operation of A&P was consolidated into a separate company and sold to a private equity firm in 2003. Tata Global Beverages Limited acquired the company in 2006. *Eight O'Clock Coffee* is now available in many of the supermarket chains that despoiled A&P's supremacy. A complete list of sources can be found at the website, www.eightoclock.com.

Our series on *Reversals of Fortune in the Tea Industry* will continue this topic in the next issue of the *Upton Tea Quarterly*.