

## RETAIL MISBRANDING OF FOODS<sup>1</sup>

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I am sure that most of you are familiar with the provisions of the Indiana Food, Drug and Cosmetic Act. The labeling provisions of that act refer to foods in package form ready for sale to the consumer at the retail level. Since most of our foods are prepackaged and ready for the customer to place in the shopping cart, the labeling requirements relate to practically all foods sold in retail groceries.

In general, any food in package form must bear a label containing the name and place of business of the manufacturer, packer, or distributor; an accurate statement of the quantity of contents in terms of weight, measure or numerical count; the common or usual name of the food and in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient. The labeling of food must not be false or misleading in any particular and, if it is an imitation of other food, the label must bear, in type of uniform size and prominence the word "imitation" and immediately thereafter the name of the food imitated. The law provides that the food shall be misbranded if its container is so made, formed, or filled as to be misleading. If the food bears or contains any artificial flavoring, artificial coloring, or chemical preservative, it must bear a label stating that fact. All words, statements or information required by the act to appear on the label of the food must be prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Several problems have arisen in the field of the statement of the quantity of contents. Regulations promulgated under authority of the act provide that the statement of the quantity of the contents shall be expressed in terms of weight, measure or numerical count, or any combination thereof which are generally used by consumers to express quantity of such food and which gives accurate information as to the quantity thereof. As you know, it is customary to purchase doughnuts by the dozen rather than the pound. However, there is no standard for the size of doughnuts and a dozen of one baker's doughnuts may weigh only one half as much as a

second baker's. Usually, if such items are packaged so that the consumer can readily determine the size of the individual units, a statement of the numerical count would be satisfactory. However, unless an unqualified statement of the numerical count gives accurate information as to the quantity of the food in the package, it must be supplemented by such statement of weight as will give such information. In cases where the numerical count is so large or such that it cannot be verified by the customer at the time of purchase, then the quantity must also be expressed in terms of weight. For example, a package containing and labeled "100 cookies" must also bear a conspicuous statement of the quantity of the contents in terms of weight since a count of 100 cookies cannot be confirmed by the purchaser without opening the package. Statements of quantity should contain only such fractions as are generally used in expressing the quantity of food and the statement should be reduced to its lowest term. The weight of a product should be expressed as "one pound", not "16 ounces", and rather than "20 ounces", the label should state "1 1/4 pounds" or "1 pound 4 ounces."

A food is misbranded if any or all of the mandatory labeling is difficult for the customer to read and understand under ordinary conditions of purchase and use. We have found examples such as licorice candy wrapped in clear cellophane on which all mandatory labeling information was printed in black ink. At the point of sale while all labeling was present, it was completely invisible. Many times, ingredient statements are printed in such small size type as to render it almost impossible to read without a magnifying glass. I am sure that you have observed similar instances of misbranding in many classes of food.

Labeling of products must not be false or misleading in any particular. Recently, a product labeled "Blueberry Pancake Mix" was the subject of regulatory action. The manufacturer had mixed blueberry preserves with cornstarch, powdered sugar, artificial flavor and artificial color to the consistency of a paste, then molded small pellets about the size of the end of your little finger. In the extremely fine print of the ingredient statement, these were listed as "stabilized blueberries". However, the

<sup>1</sup>Reprinted from Indiana Association of Sanitarians Newsletter.

words, "Blueberry Pancake Mix", were extremely prominent on the face of the label. In addition, the illustration of the product showed large quantities of blueberries. Since there were no blueberries in the product, the name of the product was false and misleading, and the illustration of the blueberries would also tend to mislead the consumer.

So far, we have discussed a few instances of products which were misbranded by labeling as we commonly understand labeling. However, a number of court decisions have held that any representation, disseminated in any manner or by any means other than by labeling for the purpose of inducing — directly or indirectly — the purchase of a food, becomes labeling of the food product. This, then, means that a table menu or wall placard in a restaurant becomes labeling of the food products being sold. Likewise, any oral representation made to induce the sale of a food is also labeling of the product.

Recently, a large shipment of meat patties destined for restaurant use was seized because of false and misleading labeling. This product, which had been shipped in from Chicago, Illinois, was labeled on the shipping container as a "deluxe meat patty". The ingredient statement listed "ground beef, soy bean meal, water, spices, dextrose, and monosodium glutamate". In the carton containing the beef patties, manufacturer had placed a number of menu clip-on cards, table tents, and wall streamers giving the name of the product as "Chopped Sirloin Steak". It was our contention that the advertising materials which accompanied the product were to be used in the restaurant to induce the customer to buy this product. Therefore, the advertising materials became labeling and served to misbrand the product by providing false and misleading information to the customer. Certainly, an adulterated hamburger is not a "Chopped Sirloin Steak".

As you know, the product "Orange Juice Drink" enjoys a rather large sale in this state, and the product certainly lends itself to misbranding. This product consists approximately of 20% orange juice, water and sugar, citric acid to provide tartness, and artificial cloud to simulate orange pulp. The product is being sold house to house and, in many instances, the driver salesman ask the housewife, "Do you need any orange juice today?", or some similar statement which implies that the product is orange juice. The company's name will always be "----- Juice Company" and the company name is very prominent on the side of the container (a half-gallon glass jug), whereas the true name of the product "Orange Juice Drink" appears in smaller letters on the screw cap. We are reasonably sure that many housewives are buying this product for their children under the

mistaken assumption that the product is orange juice. They believe that they are providing their children with the vitamins and minerals normally present in orange juice, whereas the product in fact only contains 20% orange juice and 80% colored, flavored water. Certainly, this practice is false, misleading, and fraudulent, and if we can prove these driver salesman are making such statements, we would be most anxious to take any necessary regulatory action to stop this practice. We also suspect that this product is being used in some restaurants where orange juice appears on the menu or wall streamer and when the customer orders orange juice, he is given the orange juice drink product.

A similar type of misbranding, not so important nutritionally but equally false and misleading, is the advertising of pure maple syrup on the menu or wall streamer and serving the customer an imitation maple flavored syrup instead. Other similar misbrandings would include the use of milk or cream substitutes and indicating on the menu that cereals are served with cream, or serving the substitute product when the patron asks for cream with his coffee.

For many years, both federal and state regulations provided that the weight of finished smoked products, such as hams and pork shoulder picnics, could not exceed the weight of the fresh uncured article. For example, approximately two pounds of curing solution is pumped into a 20-pound fresh ham. Some of this solution drains out during the curing period and the remainder evaporates in the smokehouse so that the final weight of the cured smoked ham does not exceed 20 pounds. Early in 1962, the federal regulations were changed to permit the weight of the finished product to be increased as much as 10% over the weight of the fresh uncured article. This means that approximately four pounds of curing solution can be pumped into a 20-pound ham, two pounds are lost in draining and evaporation during smoking, and the finished ham can weigh as much as 22 pounds. These "wet hams" must be labeled "Water Added". This is done by attaching a rice paper strip label or by branding the ham with a purple ink statement "Water Added". We have found several instances where the retail butcher stripped the paper label from the ham or trimmed off the inked statement and sold the ham as a regular ham. This practice is misbranding since the customer is being misled as to what he is buying and he is being defrauded. In the above example, the customer would pay ham price for two pounds of water.

Although we have not changed the state meat regulations to legalize this deception, we are faced with the fact that it is permitted under federal regulations and our only means of attacking the problem is at the retail level. We solicit your help in com-

batting this problem.

It is our opinion that the use of nonnutritive artificial sweeteners (such as sodium or calcium cyclamate or saccharine) in ordinary foods is prohibited by the Indiana Food, Drug and Cosmetic Act. However, it is recognized that the use of such substances has a place in bona fide foods for special dietary uses. The act provides that such products are required to bear distinctive and informative labeling, informing the customer as to the amount of fat, protein, and carbohydrates in a given portion of the food, in addition to the mandatory labeling required on all food containers. Also, when a non-nutritive artificial sweetener is used, the words "Artificially Sweetened" must appear immediately before or immediately after the name of the particular product, and the label should also bear wording similar to "Contains ---- per cent cyclamate sodium (or cyclamate potassium or saccharine, as the case may be), a nonnutritive artificial sweetener which should be used only by persons who must restrict their intake of ordinary sweets."

In our opinion, however, the labeling of these products may not prevent consumer deception, and

we believe that the distribution of such products should be so controlled as to insure that the special dietary foods are not confused with ordinary foods. We feel that it is important that these special foods be segregated from ordinary foods, especially at the retail level, by displaying all such foods in a special section of the establishment devoted to special dietary foods. Display material should emphasize the special dietary properties of these products to further insure that the prospective consumer is fully aware of the special dietary nature of the product.

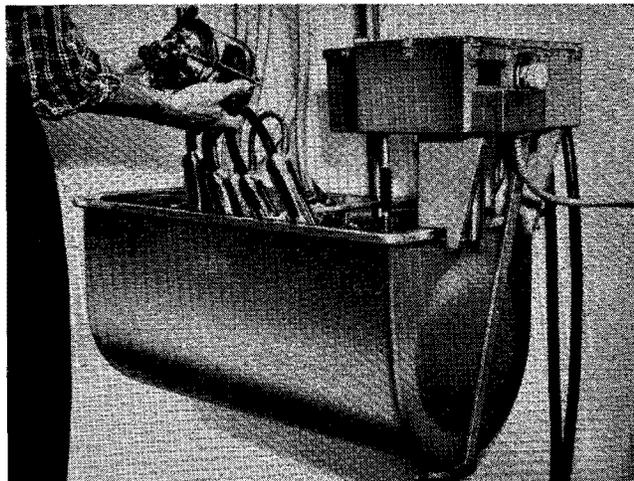
In the past, the sanitarians in the local health departments in Indiana have done an outstanding job in securing the cooperation of the retail establishments in providing special dietary departments for these products. The recent upsurge in "low calorie soft drinks" will create a similar problem which, I am sure, will be handled just as efficiently.

In this limited discussion, we have only scratched the surface of the subject of misbranding. However, I hope that this has provided you with information on some basic types of misbranding which will be of some assistance to you in your inspectional activities.

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## NEWS AND EVENTS

### NEW SEAMLESS WASH TANK HELPS DAIRY SANITATION



Of interest to sanitarians and milk technologists is a new SEAMLESS wash tank for the dairy farm which comes in a variety of sizes to fit different size milking installations, according to the builder, Babson, Bros. Co., Chicago.

Made of genuine 18/8 stainless steel, the new Surge SEAMLESS wash tank has done away with

soldered seams. Taking their place are smooth, tough welded joints with not a single sharp corner or rough spot for bacteria to hide in. Re-inforced corners are smooth and provide added strength.

The tanks may be wall-mounted or floor-mounted, according to preference. For floor-mounted models, sturdy stainless steel legs with welded bracing can be ordered separately. For wall-mounted models, wall brackets are provided.

All new Surge SEAMLESS wash tanks have big 2-inch drains. Rubber stoppers are included. All this sanitary equipment can be obtained from Surge Service Dealers throughout the U. S., Canada, Central and South America.

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### NOTICE TO MEMBERS

We have a vacancy on our Food Equipment Committee. If you have a real interest in developing standards for the evaluation and installation of food equipment and food beverage vending machines, please let me know.

Karl K. Jones, Chairman  
IAMFES Committee On  
Food Equipment Sanitary Standards