CHAPTER 2

THE NAME ON THE LABEL

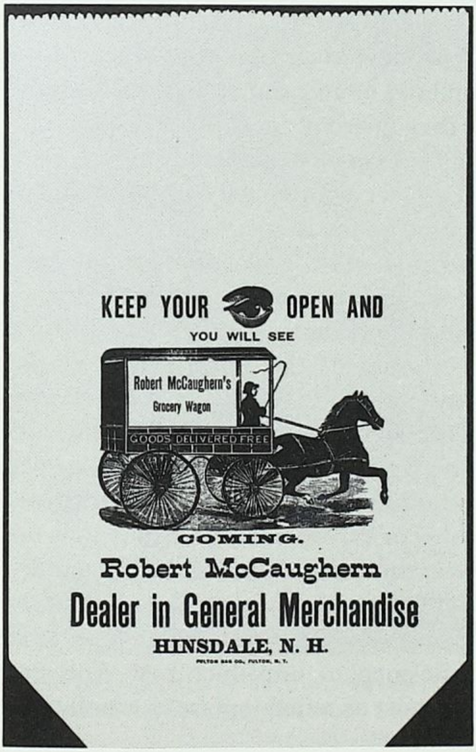
"IT IS WONDERFUL TO NOTE THE VOLUME OF PACKAGE TRADING IN food products, groceries, and patent medicines," wrote Artemas Ward, a leading copywriter and editor of both grocery and advertising trade magazines, in 1900. "Sugar, molasses, vinegar, flour, cheese, dried apples—a hundred and one things once regarded as staples to be sold only in bulk now come within the package field. Alcohol, ammonia, bay rum, come sealed and labeled. Nobody ever thinks of buying liquors or wines except in bottles, showing where they come from, and who is responsible for their condition and character. The same thing is true of tobacco and cigars, of shoe polish, of baking soda, of stove blacking, of pins and needles, of sewing silk and cotton thread and hairpins. There has been a revolution in the methods of American trade within the past twenty years."

In fact, the revolution had only just begun. Most Americans in 1900 still bought sugar and vinegar from barrels and vats at small groceries or at general stores that also sold unlabeled packets of pins and tenpenny nails in bulk. Yet branded, packaged products inaugurated an approach to marketing that Ward's contemporaries tried out in all kinds of industries, that was buttressed by new laws and legal precedents, and that by the end of the twentieth century held sway in companies selling hamburgers, books, and health care as well as at Procter and Gamble and Heinz. That approach changed customers and storekeepers into consumers and dealers, operating in a market not defined by their millions of personal interactions but bounded by the initiatives of large corporations.

Since the early years of Singer sewing machines and McCormick reapers in the 1850s, successful businesses had stamped and painted their companies' names onto their products and established direct relationships with the people who used them. Those firms, creating markets for expensive machines that required servicing and instruction, initiated such techniques as installment buying, the trade-in allowance, and the yearly model change. They controlled distribution by doing it themselves, hiring salespeople who demonstrated the equipment to farmers and seamstresses, and establishing authorized dealerships in cities and towns.

Like Singer and McCormick, the makers of chewing gum, tobacco, packaged foods, paint, and soap products adopted a strategy that established relationships with end users based on techniques designed to create markets for branded goods. Some of those companies experimented with authorized dealerships; the American Tobacco Company even set up a chain of retail outlets, the United Cigar Stores. Most, however, distributed through independent hardware, drug, and grocery stores. Branding offered manufacturers a new kind of control when supported by effective advertising, by altering the balance of power in the traditional chain from manufacturer to wholesaler to retailer to customer. No longer were customers to rely on the grocer's opinion about the best soap; no longer could wholesalers choose among various manufacturers who might fulfill their orders. People asked for Ivory, which could only be obtained from Procter and Gamble. For manufacturers, the branding strategy proved to be successful for growth, and a satisfactory response to some of the Progressive reformers' attacks on manufacturers' abuses. By marking their products, manufacturers took responsibility for them, and therefore presumably for the conditions under which they were produced.

Like so many other changes in daily life during the second half of the nineteenth century, those linked with packaged products depended in part on new technology, as inventors and entrepreneurs applied themselves to packaging materials and processes. The first paper-bag-making machine was patented in 1852 by Francis Wolle, who was to form the Union Paper Bag Machine Company, which eventually owned or controlled 90 percent of the paper-bag business in the United States. In the late 1860s, a patent was granted for the now familiar square-bottomed bag. Throughout the next decade, British and American printers



By the early 1880s, machine-made paper bags were in general use. Many manufacturers supplied retailers with bags printed with advertising, but enterprising merchants like Robert McCaughern ordered their own.

devised techniques for printing on metals, and manufacturers applied those processes to a variety of decorated tins. By the early 1880s, the folding cardboard cartons that would eventually contain Uneeda Biscuits and Kellogg's Toasted Corn Flakes could be produced by machines. The first "automatic-line" canning factory brought the continuous-process concept to canning in 1883, with machinery that could make cans at the rate of about 3,000 per hour. The resulting interest in packaging continued to spur development after the turn of the century: fully automatic bottle making after 1903, aluminum foil after 1910, and cellophane, first manufactured in France in 1913.

Manufacturing companies that chose to invest in the new machinery and purchase the new packaging materials found themselves literally making a new kind of product. Branded goods like Uneeda Biscuits and Quaker Oats used machines and materials not required for bulk production: paper, glue, and printing ink, and machinery for folding, filling, and sealing cartons and cans. To the extent that they guarded food products from insects and protected all kinds of goods from deterioration, packages gave manufacturers greater control over product quality and provided a selling point for consumers concerned about sanitation. Labeled packages showed "where they come from, and who is responsible for their condition and character," in Artemas Ward's terms, and they could be differentiated from their competition in advertisements that displayed their pictures. Clever packaging—like the Colgate Ribbon Dental Cream tube that molded toothpaste so it "Comes Out a Ribbon, Lies Flat on the Brush"—could give a product unusual qualities that might be construed as advantages. An early advertising textbook made the point clear. A label or carton, it stated firmly, was not an advertising medium but "an integral part of the commodity itself." Colgate and Quaker Oats sold products consisting of the container and its contents, not goods packed in containers. Such companies urged their salesmen to introduce new sizes and packaging materials with almost as much fanfare as wholly new products.

This advertisement for the most popular turn-of-the-century brand of toothbrush sold the packaging as much as the brush. From *Collier's,* 1905.

"Boy With Wheelbarrow," a 1901 National Biscuit poster, lithographed in four colors by the Forbes Lithograph Manufacturing Company of Boston. It measured 9 by 14 feet, divided into sixteen sheets, each 28 by 42 inches.

No company exploited its packaging as a selling point as relentlessly as the National Biscuit Company, which urged consumers to forswear the cracker barrel in favor of the company's In-Er-Seal package. This carton, created by National Biscuit's lawyer on his kitchen table, interleaved cardboard and waxed paper. It was introduced with the Uneeda Biscuit on December 27, 1898, patented in March 1899, and given the name "In-Er-Seal" in 1900. By 1908, the company packaged forty-four products in this carton, including ZuZu ginger cookies, Nabisco Sugar Wafers, and Social Tea Biscuits. The company had spent more on advertising than any other in the country except for American Tobacco and Royal Baking Powder, and most of those ads featured the packaging and the boy whose yellow slicker, like the In-Er-Seal, protected him from moisture.

In modern marketing terms, the emphasis on packaging in the National Biscuit advertising served as "product education." The

company was promoting not simply its own products but the product category: packaged crackers and cookies. This was necessary in part because some customers were suspicious or fearful of packaged food. Cans and boxes concealed colors and odors and prevented shoppers from tasting food before they bought it. Six years after the 1906 federal Food and Drug Act, a grocer's magazine claimed that "many people are afraid of canned goods because of sensational stories which are repeatedly printed about them." The article recommended that grocers increase packaged-food trade by holding store demonstrations, which would allow tasting, allay fear, and offer an opportunity for consumers to learn new ways of eating and cooking. "The difficulty with the sale of a good many new things is the housewife doesn't know how to prepare them," this article asserted.

Companies usually abandon product education and concentrate on pushing their own brands once the category is established and competitors have challenged the leader's share of the market. In National Biscuit's case, this took decades; the category was not well established until after World War I. The many regional bakeries that had been consolidated into National Biscuit made literally thousands of kinds of cookies and crackers. In 1908, they produced dozens of biscuits for bulk distribution in addition to the forty-four packaged varieties. As late as 1923, the National Biscuit Company still did 75 percent of its business in bulk. The cracker barrel had been supplanted, not by the In-Er-Seal package, but by new bulk packaging: covered glass-front tins that permitted display of the merchandise. With the important exception of Uneeda, its first packaged product, Nabisco did not concentrate on advertising its brands.

Still, the symbols of the National Biscuit advertising—the boy in the slicker, the circle-and-cross trademark, and the word "Uneeda"—made a major contribution to the concept of the brand as late-twentieth-century consumers understand it. That concept was still relatively new at the turn of the century. For most of the nineteenth century, manufacturers generally sold their entire output to middlemen, who would distribute it to the trade for sale to households. Unlike traditional craftspeople, who often knew their customers and, following the practices of artists and of crafts guilds, marked their goods with their names or with special symbols, these manufacturers left their goods

These labels from the 1830s show the various ways that names were used on early manufactured products. No name or brand appears on the ink label; the tack and shoe-nail labels identify the manufacturer and the merchant; the cotton-cord and shoe-blacking labels use brand names, with and without manufacturer identification.

unmarked. If the merchandise bore a label, it as often displayed the name of the wholesaler or the retailer as that of the manufacturer. Some labels carried a name that did not identify either the maker or the seller, although it might be that of a person or place somehow connected with the product.

To the late-twentieth-century consumer, the concept of the brand seems self-explanatory, almost natural. Like the rancher's mark on a straying steer, both manufacturers' brands and the less expensive "house" brands (also called "private labels") serve to identify a source: branded labels name and identify the manufacturer or distributor who can be held accountable for the goods. As a result of that accountability, the brand stands for the consumer's expectation of product quality. As late as 1884, however, when A. Schilling & Company, San Francisco tea merchants, published a book of advice for traveling salesmen promoting tea imported from Japan in its Perfection cans, the branding concept was not defined in this modern sense. Some famous brands had already been launched—Procter and Gamble was advertising Ivory, for example—yet the Schilling "special brand system" suggests that Americans did not necessarily connect the symbolism and information on product labels with their expectations about the products.

Schilling used brand names, but neither its own name nor those of the retailers who sold its tea appeared on the labels. The company gave each merchant sole use of a brand—perhaps named "Treasure" or "Mayflower"—in his town; larger orders qualified him for brand control in a county or state. Merchants who ordered twenty-five chests or more (each containing 120 pounds of tea) were eligible to sell cans bearing multicolored labels lithographed in Europe; each chest included twenty pieces of advertising matter—"napkins, mats, small fans, lamp shades, fancy cards, etc." Those who bought less got labels printed in Japan from woodcuts, and no advertising matter. Schilling might sell more than one brand to different merchants in the same town; townspeople might find Treasure tea at one store and Mayflower at another. The firm stressed that it would not grant the exclusive right to sell tea in Perfection cans.

Schilling celebrated its cans for the protection they offered from dirt and air, and for the absence of lead, then commonly used to line tea chests. In contrast to National Biscuit twenty years later, however, the company downplayed the conceptual importance of the packaging. *"The can is simply a box or chest,"* Schilling emphasized, no more an indication of quality than a flour sack, a soap box, or a cigar box. Any grade of tea might come in a can. "It is ridiculous to suppose that a merchant buying a tea for which he paid 55 cents in the Perfection Tea Can, should be thought to have the same class of tea, and be expected to sell it at the same price, as another merchant who paid only 35 cents for his, simply because it is packed in the same kind of package," the company asserted. "An idea like this at once defeats the very object of the special brand system, which is to enable merchants to put their own price upon their tea, just as they do when they get it in bulk chests."

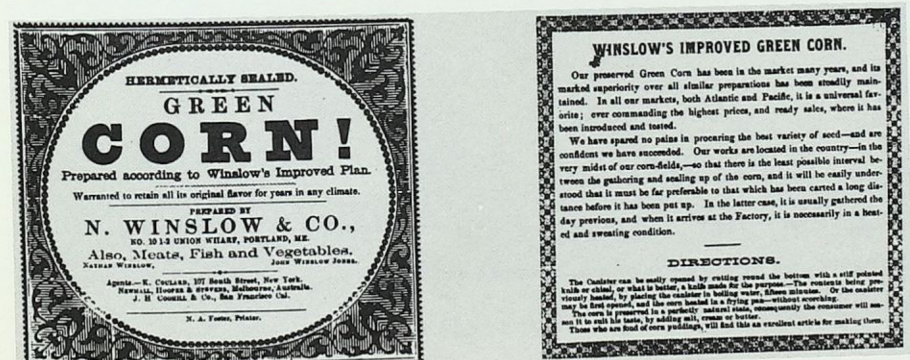
Unlike most packaged-goods companies at the turn of the century, which suggested retail prices and campaigned to be allowed to set them legally, Schilling explicitly offered storekeepers freedom in price-setting. In order to protect the merchant customer's right to charge whatever he wanted, the company urged salesmen to "so arrange matters that nothing on the label shall give the consumer, or the salesmen for competing houses, the slightest hint of the value of the tea within the can." Several qualities of tea—to be labeled with terms like "Extra Choice," "High Class," "Superior," and "Fancy"—might be sold under any one brand, but these referred only to relative quality within that one brand. The company told salesmen to prevent competing merchants with different brands from employing the same terms, so that the quality of Mayflower Fancy could not be compared with that of Treasure Superior. Thus in the 1880s Schilling used its brands not to identify itself to the consumer but to convince retailers that tea bought from this company would not have to confront competition in price or quality. "The label has nothing to do with the character of the

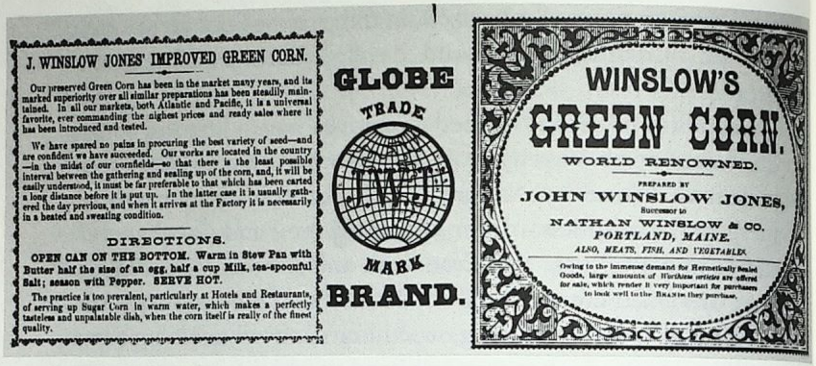
tea," the company emphasized, in direct opposition to the concept of branding that would develop during the next two decades.

A series of labels for canned corn reveals many features of that development process. The earliest label (A) was used on corn packed in Maine by Nathan Winslow and his junior partner (perhaps his nephew), John Winslow Jones, and distributed to agents in New York, San Francisco, and Australia. Because tin cans, first used commercially in 1839, found their primary market in mining and exploring expeditions and military campaigns until the 1880s, packers were obliged to find distant outlets. On this label, the Winslow company identified itself, advertised its other products, and gave distributors' addresses, but used no brand name, headlining instead the contents—"Green Corn!" The directions urged the "consumer" (in a literal use of the term) to season to taste, suggested two modes of preparation (one of which would not dirty a pan—convenient on an expedition), explained to those unfamiliar with canned goods or not in possession of a can opener how to get to the food, and offered a recipe suggestion.

When John Winslow Jones succeeded Nathan, he retained both the Winslow name and much of the descriptive label language. His new label recommended that purchasers "look well

A





B

C

D

to the BRANDS they purchase," (B) and offered them two names to go by: "Winslow's Green Corn" and "Globe Brand," the latter identified by a "trademarked" image that the company may or may not have registered. New directions assumed more familiarity with cans and can openers, furnished a recipe with precise measurements, and warned against a common but unpalatable mode of preparation.

The remaining labels all show a new emphasis on design in part made possible by turn-of-the-century printing techniques. Such updated methods did not necessarily imply a corresponding modernity in the use of the brand concept, as the unbranded Green Sugar Corn label from the Oxford Packing Company (C) suggests. In typical labels produced for private brands (D), the printing process was arranged so that a brand like White Diamond could be used for more than one client. The label read "Packed for," not "Packed by"; the name of the wholesaler or retailer was then filled in.

Another label (E) identified corn distributed by Thurber, Whyland, and Company, one of America's largest wholesalers, which offered a full line of privately labeled canned vegetables. Thurber, Whyland printed labels both with and without its own Windham brand, in a uniform style, with information in three of the many languages used by the urban retailers who bought this

E

F

company's goods. Its promise of "pure and wholesome" food echoes language used by the political movement that produced state legislation and, in 1906, the federal Pure Food and Drug Act.

Burnham and Morrill's label for its Paris Sugar Corn (F) made a more explicit promise of purity and exemplifies the modern use of the brand to identify the manufacturer. This company entered the corn it packed in Paris, Maine, in a small exposition in Paris, France, as well as in the Philadelphia Centennial and the World's Columbian Exposition, the famous Chicago World's Fair of 1893. The medals displayed on the label were intended to persuade new consumers to try the goods, while the repetition of the brand name "Paris" might give them something to remember that would bring them back as old customers.

Manufacturers like Burnham and Morrill intended their brands and the trademarks that gave them legal status to help consumers differentiate their products from competing ones, and thereby to create demand. Ideally, the product itself could be differentiated—by flavor, by efficacy, or by some other attribute. People would come to the store knowing they preferred, or wanted to try, the floating soap or the toothpaste that came out flat on the brush. Often, however, the differences were minor or nonexistent; then shoppers who could remember a trademark or the look of a package might still ask for a brand by name.

As the branding concept developed, the leading corporations devised different tactics for using it. Libby, Swift, and Armour all used their company name to brand the many products they made. Some—like Armour sandpaper and Armour bacon—were quite unrelated in consumers' minds, but together they were intended to support and differentiate the overall brand image. Procter and Gamble used a different strategy, giving its products such separate brands as P & G Naphtha, Ivory, and Star, three names for soaps that competed with each other. Similarly, tobacco, tea, and coffee companies branded many blends of various flavors and qualities and attempted to differentiate their brands from each other as well as from those of competing firms. In either case, branding committed the company to producing standardized products—or, in the many industries still dependent on rudimentary technologies or agricultural exigencies, to attempting to do so. Consumers' expectations of consistency would help create goodwill, the favorable consideration of customers that derived from a company's reputation and, by the 1890s, an intangible but legally salable form of property.

Goodwill had a longstanding history in the law regarding retail trade. Legal precedents for the concept were established in England around 1600, and the term was first used in 1743. A 1769 case explicitly held it not to be property: goodwill, the court claimed, could not be sold because a potential purchaser had no power to keep it. It emanated from customers, who could choose to patronize another business and who themselves could not be purchased. United States Supreme Court Justice Joseph Story, who wrote the most authoritative and formative legal opinions and texts of his day, described goodwill in 1841 as a business establishment's "advantage or benefit . . . beyond the mere value of the capital stock, funds, or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers, on account of its local position, or common celebrity, or reputation."

This "advantage or benefit" had monetary value in common practice: retailers selling their businesses charged more than the value of the stock and fixtures. Legal thinkers debated goodwill's legal status as property throughout the last three decades of the century, along with that of other intangible forms. In the *Slaughter House* cases of 1872 and 1884, a majority of the United States Supreme Court reiterated the common-law concept that limited legal property to physical things. The minority opinion began to hold sway in the lower courts during the ensuing years. Finally, in a series of cases beginning with the 1890 *Minnesota Rate* case, the Supreme Court held that property encompassed not only physical things but expected earning power, sale value, and the liberty of access to markets. This crucial redefinition made goodwill into legal property and revised the legal status of stocks, bonds, and credit, thus facilitating the development of the corporate form.

Throughout this period, the courts reversed themselves several times over the property rights relating to trademarks, the legal symbols of goodwill, which also had long-established rights in common law. The confusion stemmed in part from the changing definition of property, in part from a conflict between property issues and questions of public protection from fraud, and in part from successive revisions of trademark legislation. Although the United States Constitution specifically referred to patents and copyrights, it made no provision for trademarks. Responding to cases in the civil courts and to a growing international interest in trademarks, Congress passed the first American trademark act in 1870. In the first year, 121 marks were registered.

Manufacturers began not only to mark their goods and promote their own marks but to organize societies to foster trademarking in general. The first such organization and the most famous foreign trademark society, the Union des Fabricants, was founded in Paris in 1872. Five years later, organizational efforts began for what became the United States Trade-Mark Association, which adopted a constitution and bylaws in December of 1878. Its early officers included Edward Clark, the president and marketing genius of the Singer Manufacturing Company, Bowles Colgate of the soap family, and Eberhard Faber, whose name may still be read on pencils.

Less than a year after the USTMA first met, the Supreme Court held the 1870 and 1876 trademark statutes unconstitutional. The organization immediately instituted lobbying efforts for what became the trademark acts of 1881 and 1882. It collected information from manufacturers, seeking to determine the extent of trademarking, in order to combat opponents' arguments that trademarks were unnecessary to commerce. Few goods bore trademarks, these adversaries claimed, and most existing marks labeled spirits, tobacco, and patent medicines, the latter already protected under patent law. The association continued its public relations efforts long after the laws were passed, exhibiting at fairs including the 1893 Columbian Exposition, where it received a medal for its display of trademark literature.

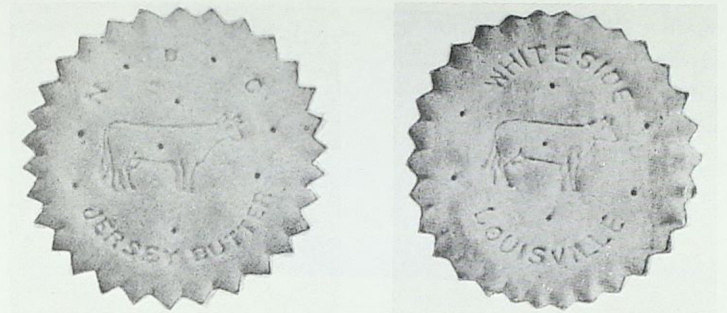
In 1898, President McKinley named Francis Forbes, then president of the USTMA, to head a commission charged with revising the patent and trademark statutes. The report, incorporating two proposed bills, was submitted two years later, and Congress finally passed legislation in 1905. The new act established trademark registration as prima facie evidence of ownership, which meant that those who registered their marks would be favored in court. It allowed for registration of all marks that had been in use for ten years or more, and provided for the destruction of infringing labels and packages as well as for the recovery of damages for infringement. It prevented goods from entering the United States bearing infringing trademarks, and gave jurisdiction to federal courts regardless of the citizenship of the parties involved. This time, ten thousand new marks were registered within a year of the act.

Unlike patents and copyrights, trademarks did not expire. The mark had to be new, not in common use to designate similar articles; it had to be exclusive, not used by two or more persons or corporations; and it had to be attached to the product in some

Companies printed their trademarks on all of their advertising materials, but also used them in circumstances that might not directly relate to promotion, like this 1907 Wrigley letterhead.

way—printed, stamped, or pasted on the article itself, or on a wrapper, bottle, label, or tag. Under the 1905 law, later amended, a trademark could not consist of words that described the product, or of proper names of people or places, all of which might reasonably be used by other manufacturers. The law permitted the use of a company name only if it was presented in some distinctive manner, such as unusual lettering.

Stamped onto sides of beef, crackers, and bedposts, prominent in advertisements, and emblazoned on company letterheads, trademarks built corporate images outside direct selling transactions. The Standard plumbing-fixture company even altered its typewriters so that "Standard" could be typed with the trademark's Gothic lettering. Some successful marks transcended their makers and came to define the product category, to the distress of the companies whose goodwill they represented. "The word 'Pianola' is not a term applicable to Piano-players in general, but the specific name of the instrument manufactured and sold by The Aeolian Company," readers of the advertising pages in *McClure's Magazine* learned in 1905. "There is no Kodak but the Eastman Kodak," that company had



Manufacturers stamped trademarks directly onto their products, and infringing competitors imitated them there as well as on the packages. These biscuits were used as evidence in a case tried in the Circuit Court of Indiana from 1905 through 1907.

asserted in a small box in the corner of an advertisement seven years earlier. In 1899, Eastman took full-page ads to explain further: " 'Kodak' is a Trade Name applied by us to cameras and other goods of our manufacture. We originated and registered the word 'Kodak.' The trade-mark is our exclusive property." By 1905, the year of the new trademark law, the firm had found a snappier slogan: "If it isn't an Eastman, It isn't a Kodak."

Like the Xerox Corporation later in the century, the makers of Pianola and Kodak wanted to protect their marks because trademarks and the goodwill they represented had become valuable business assets. In 1911, when the Supreme Court dissolved and reorganized the American Tobacco Company, its trademarks were estimated to be worth \$45 million out of \$227 million in total assets. The president of the National Biscuit Company appraised "Uneeda" at more than \$1 million per letter, while a Coca-Cola officer valued his firm's trademark at \$5 million. Edward S. Rogers, a Chicago lawyer who published one of many advice books on trademark law, stressed the arbitrary nature of such figures. He quoted auditors and other executives from major national manufacturing firms, many of whom were

Packages of Uneeda and Iwanta biscuits, used as evidence in an 1899 case, one of many brought by National Biscuit against its imitators.

nearly as frank as the one who ended a financial statement with the words, "We realize that this plan is entirely arbitrary." Still, Rogers referred his readers to two accounting textbooks that offered discussions on valuing such intangible assets.

Successful trademarks were widely imitated, and the most celebrated manufacturers spent considerable time and money in court pursuing the imitators. "This case is too plain to waste many words over it," Judge Lacombe of the United States Circuit Court in New York's Southern District declared in the action brought by the National Biscuit Company against the makers of Iwanta Biscuits. The defendant claimed to have put "considerable thought" into selecting a name that would differentiate his goods "so that there could be no possibility of mistake." He failed to convince the judge, who considered it curious that so many manufacturers "seem to find their inventive faculties so singularly unresponsive to their efforts to differentiate." Lacombe ruled for Nabisco. Local bakers all over America infringed on the company's trademarks; by 1915, National Biscuit could publish results of thirteen successful suits, and other manufacturers had abandoned 882 imitative marks without being brought to court.

Often the larger companies won because they could afford to

Exhibits from *Coca-Cola Company v. Williamsburgh Stopper Company, et al.*, a case that lasted for a decade in the federal courts.

litigate for years or even decades. In a case that went from 1912 to 1922, Coca-Cola successfully sued the makers of Espo-Cola. "Esposito may use the word 'Cola' and may use the word 'Espo,' but when he expresses either or both of those words in a style of script commercially unheard of except for advertising purposes, I am persuaded that he goes too far," wrote the judge. Yet despite the generally greater resources of the national advertisers, their cases were occasionally unsuccessful. Coca-Cola filed suit for infringement against Citro-Cola on the basis of name, bottle size and shape, label design, and a pamphlet that described the product as a preparation "for making the popular drink of the day at a minimum cost." "Perfect in color, smell, taste and in every respect," Citro-Cola told druggists. " 'A word to the wise.' " In 1909, the court ruled that the names and bottle designs shared features in common use at drug stores and soda fountains for beverages and syrups. And, although the pamphlet might be suggestive of imitation, it was not necessarily an incentive for soda-fountain operators to substitute Citro-Cola when patrons asked for the beverage that was yet to be dubbed the "Real Thing."

Companies that could afford to do so invested heavily to avoid innocent infringement. In April 1913, R. J. Reynolds's law firm initiated inquiries about the status of a number of names that had been proposed for the company's new cigarettes. In July, Reynolds paid Salvatore Ragona of New York City $300 for the rights to the name "Red Kamel," its goodwill, the die, and 5,000 cigarettes. In October and November, the company launched two new brands, Camels and Red Kamels, the latter an elegant, cork-tipped cigarette retailing at twice the price of Camels. Early in December, the lawyers discovered a Philadelphia firm that claimed also to have bought the Red Kamel brand. Although Ragona disputed this claim, R. J. Reynolds paid another $3,000 to buy the title a second time, acquiring also 200,000 cigarettes, 15,000 boxes, and 5,000 cartons. The company manufactured Red Kamels until 1936, but the brand never took off. In any case, Reynolds's major concern was to protect the name

"Camels," the product that established marketing practices for the modern cigarette industry.

During the years after the 1905 law, litigation about trademark infringement and unfair competition became central to an understanding of trademarks as a legal field. In 1912, a firm of patent attorneys with offices in New York and Washington published the first of a series of booklets explaining trademarks to businessmen. The pamphlet had doubled in size by 1915, with nearly forty new pages, all containing excerpts from case law about infringement and unfair competition that made for considerably more difficult reading than the original pages, which offered advice to manufacturers on picking trademarks and described good ones. Most patent-law firms and many advertising agencies, business magazines, and independent publishers offered such advice. The matter of an effective symbol went well beyond the law, according to Glen Buck, the Chicago advertising agent who had designed famous trademarks for Ford, Van Houten's Cocoa, and others. The question "What constitutes a good trademark?" Buck maintained, should be answered with another: "What makes a great play—or poem—or picture—or building—or dinner?"

The trademark, Buck wrote in 1916, "is being served to us with the salad at conference dinners; discussed where directors gather; torn into shreds by the analyzing class publications; profoundly expounded by wrinkled-browed lawyers." It was born "in the earliest dawn of civilization," he pointed out, "but it has been only since the development of advertising to its present hopeful state that it has become a subject for conversation in thundering subway trains. . . . The trademark is in the atmosphere." Indeed, the economy and the culture had adopted trademarking as surely as any individual manufacturer. In 1912, Congressman Philip P. Campbell of Kansas even introduced a bill in Congress making goods in interstate and foreign commerce illegal "without printing, embossing, or stenciling the name and address of the manufacturer upon such article or commodity."

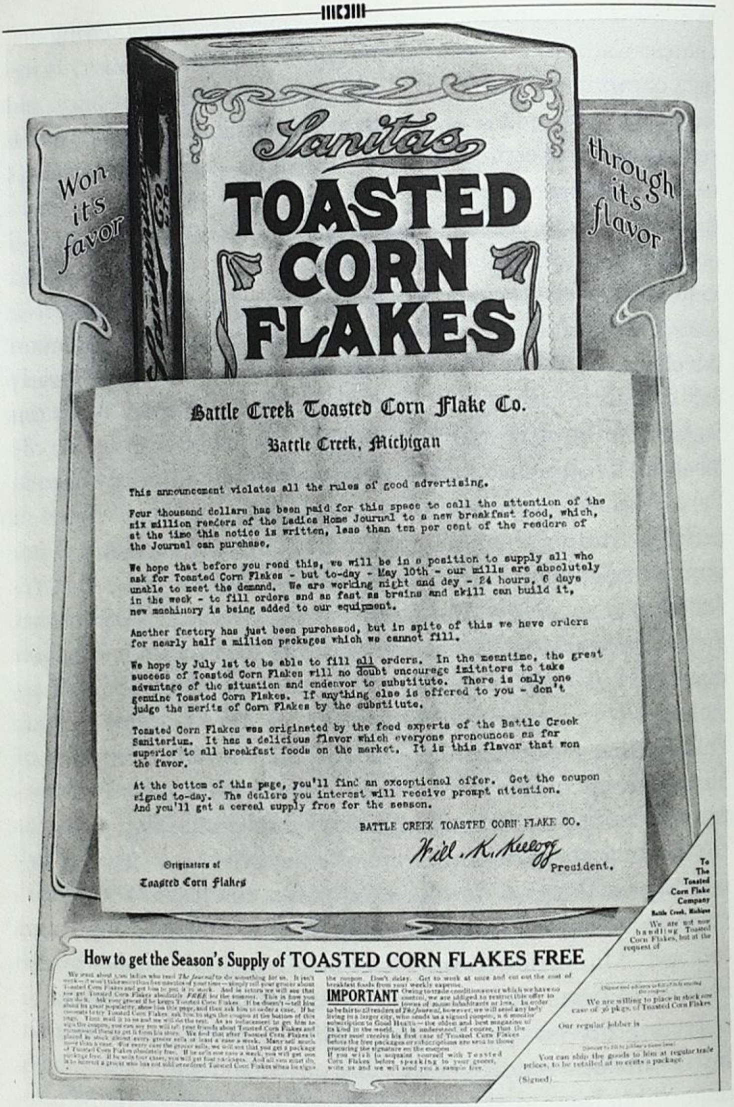
"The bill is along the same lines as the pure food law," the congressman maintained, designed to combat "dishonest and unscrupulous manufacturers, and . . . convict-made and sweatshop goods." Trademarks made their makers accountable, and thus offered manufacturers ammunition against Progressive reformers, who called attention to unsanitary practices in food factories both before and after the 1906 Pure Food and Drug Act. Swift and Company explained this reasoning to stockholders. "Dressed and cured meats and provisions are sold under Swift & Co.'s own name," the firm wrote in its 1910 Year Book, one of the first published annual reports. "Fresh meats bear the number of the abattoir where dressed; cured meats and provisions are either skin-branded, box-branded, tagged or labeled. These brands make Swift & Co. doubly responsible to the public; they keep them on the alert to maintain [both] self-imposed and Governmental high standards."

Whether or not the public believed that manufacturers' brands signified high quality, people learned the most advertised brand names. In 1917, when an article on the subject appeared in the first volume of the *Journal of Applied Psychology*, every one of three hundred men interviewed could think of at least one brand of fountain pen, watch, and soap, and although they named thirty-six brands of soft drinks, nearly two-thirds mentioned a single brand. By the early 1920s, studies showed that people asked for brands at stores, and that brands dominated sales in many industries. Ninety percent of Chicago grocers interviewed in 1920 said that more than three-quarters of their customers requested baked beans by brand name, and Campbell's soup was the best-seller in 145 out of 147 stores.

Branding was certainly not by itself a sure-fire strategy. Many—if not most—branded products failed, and even such extraordinarily popular and widely advertised brands as Sapolio household cleaner and Egg-O-See cereal died, early examples of what marketers now call the "product life-cycle." Yet successful brands were central to marketing schemes that built powerful companies. Nearly all the brands mentioned by a majority of the 1,024 subjects studied by two New York University researchers in 1920–21 are still familiar: Kodak cameras, Singer sewing machines, Campbell's soup, Postum, Old Dutch Cleanser, Wrigley's chewing gum, Colgate toothpaste, Welch's grape juice, and Arrow collars—made by Cluett, Peabody, and Company, which continued to use the trademark on shirts after separate collars went out of fashion.

Branding was part of a strategy that created demand even if production capacity was insufficient to fill the orders. W. K. Kellogg's first national advertising, in the July 1906 *Ladies' Home Journal,* admitted that as of May 10, with its mills working around the clock six days a week, it had a backlog of orders for nearly half a million packages. The sales manager for the American Sugar Refining Company acknowledged that his firm could only fill about two-thirds of each order with Domino Package Sugars. Yet he continued to urge his salesmen to promote Domino in packages rather than sugar in bulk. "Remember that you are DOMINO salesmen first!" he ended the circular letter that revealed the shortage. Both companies assured customers that they were working as hard as possible to increase production capacity. For weaker firms with stronger competition, such assurances sometimes failed to work. ITS TOO LATE NOW CANCEL, Philadelphia's Strawbridge and Clothier wired the makers of Munsingwear union suits in 1888. LETTER RECD WONT KEEP PEOPLE WARM SHIP AT ONCE, read another telegram, from Indiana.

The Kellogg and Domino marketing programs, creating demand regardless of supply, exemplify a fundamental transformation in manufacturers' attempts to coordinate supply and demand. The production-driven marketing necessitated by the massive outputs of flow production increasingly gave way to marketing-driven production, with decisions about output based on sales records and sales plans, and with sales offices responsible for coordinating the flow of goods through the production process. By 1910, the Sherwin-Williams Company used daily and weekly sales reports as a basis for deciding on output. "I will say that our sales campaigns are, of course, largely affected by the producing capacity of our factories," wrote Adrian Joyce, the general manager of the company, "but during the



The first Kellogg national advertising appeared in the July 1906 *Ladies' Home Journal.* It was written with the assistance of Arch W. Shaw, an original Kellogg stockholder, a member of the first board of directors, and the editor of *System,* a prominent business magazine.

past few years our sales organization has kept ahead of the factory output all the time. In other words, we have been crowding our factories to the limit in order to take care of orders from the sales department."

The companies that could best achieve smooth coordination between expanding output and new orders were those that did their own marketing. This practice was inaugurated—in Singer's case as early as the 1850s—by companies with specific marketing problems, many introducing new products that required demonstration, instruction, and after-sales service, with no channels of distribution already established. They were followed during the 1880s and 1890s by manufacturers who built capital-intensive factories, using continuous-process machinery and methods to produce great quantities of low-priced goods like cigarettes, breakfast cereals, and matches. To create, expand, and maintain the markets for their large volumes of goods, these manufacturers assumed control over their marketing networks and methods. Such companies grew to dominate not only their own industries but industry itself, building immense factories and marketing around the world, integrating production and distribution within their organizational systems.

Even some companies in the differently organized clothing and furniture industries successfully branded and marketed their own products before World War I. Producing goods in relatively small factories and limiting themselves to domestic markets, they never made the lists of the largest industrials, but they did build prosperous businesses that lasted for many decades. Makers of nonfashion clothing in standard sizes—socks, underwear, and work clothes—could market their goods as packaged products, selling Munsingwear and Levi's in the same general stores that carried Quaker Oats and Diamond matches. Products that required more sales effort went to specialized small clothing, furniture, and shoe stores that served as the primary outlets for Arrow shirts, Hoosier kitchen cabinets, Bissell carpet sweepers, and Buster Brown shoes.

Not all manufacturing companies adopted the branding strategy. Another way of disposing of outputs was more traditional: making goods for private labeling. As they had for many decades and as they do today, wholesalers at the turn of the century sold products under their own brands, and many wholesalers offered their retailer customers a line of goods to be marked with the retailers' names. "Look out for corn flake pit-falls," the Kellogg Toasted Corn Flake Company warned in a 1910 advertisement. "As a last resort a few small unknown manufacturers of Corn Flakes, *who couldn't succeed with their own brands,* are packing private brands. . . . Some salesmen claim that they are packed by Kellogg, and some only go so far as to say that they are 'just as good as Kellogg's.' *Neither statement is true.* Kellogg packs in his own packages only." Heinz, Van Camp, and some other large advertisers likewise refused to manufacture private brands.

When Kellogg named names in its magazine for grocers in 1912, it accused not a "small unknown manufacturer" but the Quaker Oats Company, which packed Montgomery Ward's Sunset corn flakes. "We know it to be a fact because we can see from our windows right across the street from the Quaker corn flake factory the Sunset packages going through the mill," Kellogg wrote in response to a trade-paper request for proof. "If the manufacturer's name were on the label, no such proof would be required," the company pointed out, accusing the mail-order house also of providing a market for prison-made goods, and publicizing the Campbell bill that required all goods to bear trademarks.

Companies that produced private brands defended their practices. "We manufacture nothing but private brands, but we refuse to be classed as 'business pirates,' " wrote V. B. Brown, the advertising manager for the Wabash Baking Powder Company. "The real 'pirates' are found camping on the trails of the regular brands," he insisted, pointing to the Coca-Cola trademark imitators. Private-brand manufacturers protected their markets by providing high-quality goods at lower prices for the consumer and higher margins for the retailer, wrote Brown. "What interests every manufacturer," he maintained, "is not the *publicity* of his particular brand, but a *market* for the sale of his goods."

Yet branding did not merely offer a market. It offered a predictable and controllable market: protection against competition, against industry price fluctuations, and even against the effects of business cycles. During the 1880s, with bulk prices plummeting in their industries, the makers of Duryea and Kingsford starch and Quaker oatmeal preserved and even advanced their profits. Manufacturers producing branded fine writing papers maintained their prices after the Panic of 1893 better than makers of staple paper products such as newsprint and wrapping paper. By 1909, some admen argued that a million dollars' worth of advertising could not destroy Ivory soap—in essence, that Procter and Gamble had made itself invulnerable to competition. Even the advertising manager for Woodbury's soap took this position, commenting that Ivory "is about 99 45-100 per cent imbedded in the broad American mind . . . at the expense of much time, some money and a few brains."

Ivory was perhaps the most spectacularly successful example of the branding strategy. Packaging, labeling, advertising, and selling through retail outlets owned by others offered manufacturers a way to take control of a product's marketing and distribution without setting up their own stores or establishing house-to-house sales forces to create business relationships with households. In industry after industry, leading firms consciously chose this strategy, promoted just as consciously by advertising industry organizations and trade journals. Yet the strategy entailed inherent systemic tensions. Large national organizations introduced the enormous quantities of goods manufactured by the new methods of mass production into a fragmented distribution system. Regional wholesale firms and many small local storekeepers formed that system, which was based on familiar relationships and the personal interactions of credit and bargaining. Branding and advertising were transforming those relationships, but manufacturers had to work with them and within the limitations they imposed.