

water. Both are put up in bottles, and are served by the glass at cold drink stands. The bottles containing "Koke" are a little taller than those containing "Coca-Cola." The bottles containing each beverage have a tin cap over the stopper. The words "Coca-Cola" and "Koke" appear in script on these tin caps. "Coca-Cola" and "Koke" are similar in color. The defendants sold to dealers exclusively. It appeared, in testimony, that, in some instances, persons who wanted Coca-Cola would say, "Give me a dope," or "Give me a Koke." There was also proof to the effect that two or three dealers in Tulsa, Okla., gave "Koke" to their customers when they had called for "Coca-Cola." There was no proof that the defendants sold "Koke" for "Coca-Cola," or advised their customers to do so. In that respect this case differs from the case of *Coca-Cola Co. v. Gay-Ola Co.*, 200 Fed., 720. In that case, the defendant claimed to have discovered the complainant's formula, and to be in fact making the same thing. There the Court of Appeals for the Sixth Circuit held that a case of unfair competition had been made out, in that the defendant sold its product "as and for Coca-Cola." Nothing appeared in the testimony, in the present case, connecting the defendants with any effort to sell their product for Coca-Cola. There was nothing to show that they had such intention. In the case of *Coats v. Merrick Thread Co.*, 149 U. S., 562, where unfair competition in the manufacture and sale of thread was charged, the court said: "We think the defendants have clearly disproved any intention on their part to mislead the dealers who purchase of them. Indeed, such dealers could not possibly fail to know what they were buying, and the fraud, if any, was practiced on the buyer of a single or a small number of spools, who might be induced to purchase the thread of the defendants for that of the plaintiffs. If the purchaser of such thread desires a particular make, he should either call for such, in which case the dealer, if he puts off on him a different make, would be guilty of fraud, for which the defendants would not be responsible, or should examine himself the lettering upon the spools." Although it appeared in testimony, that it was the custom of dealers, in serving the two beverages, to remove the tin caps from the bottles, so that the purchaser did not see the name thereon, that would be true as to any beverage of like or similar color to Coca-

Cola. According to the testimony of the plaintiff's agent, there are 181 beverages having practically the same color as Coca-Cola. The defendants, it was held, could not be held responsible for what their customers did without aid, suggestion, or inducement from them.

The plaintiff also argued that "Koke" had become the "secondary name" of its product, because it appeared from the proof that some persons desiring that product say to the dealer, "Give me a Koke." A trade-name may be acquired by adoption or use. But the plaintiff had never used the word "Koke" in connection with its product. It has taken and used the name of "Coca-Cola." The use of the word "Koke," as applied to the product of the plaintiff, had been, so far as the testimony showed, by persons upon their own volition without being moved thereto by the defendants. If the use of the name had been observed by the defendants, and it was afterwards adopted by them with the purpose and intention of taking advantage of that fact and to engage in the manufacture and sale of a beverage and call it "Koke," and sell it "as and for Coca-Cola," then a case of unfair competition would undoubtedly be made out.

Assuming that there is such a thing as a secondary trade-name, the right to its exclusive use must depend upon adoption and use, just as in the case of a primary name. There is such a thing as a name having acquired a secondary meaning. But it was held that the facts in this case did not call for an application of that rule. The relief sought here, was the prohibition of the use of a name that the defendants had neither adopted nor used. There was nothing to show that the defendants were using the name for the purpose of selling the beverage manufactured by them for Coca-Cola. The plaintiff's bill was therefore dismissed.

Coca-Cola Co. v. Branham, 216 Fed., 264, decided July 15, 1914.

Council Business

COUNCIL LETTER No. 6.

Philadelphia, Pa., November 12, 1914.

To the Members of the Council:--

Motion No. 10 (Election of Members; Applications Nos. 31 to 36, inclusive) has received a majority of affirmative votes.

In connection with the subject of time of holding the sixty-third annual meeting of the American Pharmaceutical Association and the suggestion that it be held either before or immediately after the time set for the annual meeting of the A. M. A., in June, 1915, Local Secretary *Pro-tem*. Schneider opposes the suggestion on the ground that the colleges of pharmacy do not close early enough to allow some of the most active members of the Association to leave for San Francisco.

Frank H. Freericks writes as follows:

"I am just in receipt of Council Letter No. 5, and note that Mr. Wilbert requests consideration for the holding of our Annual Convention some time in June, either immediately before or immediately after the meeting of the A. M. A. Of course, it would be most desirable to arrange for the respective conventions at about the same time, especially since otherwise it may interfere with the attendance at our convention of some of our most valued members. However, I cannot help but point out, that the holding of the convention at that time in June will conflict with the dates set for a great many State Association meetings, most of which take place late in June and early in July. As Chairman of the Section on Education and Legislation, I would say, also, that the Section has mapped out an elaborate plan for the drafting of "A Modern Pharmacy Law," with the support and co-operation of State Boards of Pharmacy and of State Pharmaceutical Associations. It is a feature of this plan to have the drafting of such a modern law discussed at the annual meeting of all of the State Associations, and then to have it finally agreed to and final changes made at the sessions of the Section on Education and Legislation. This will work-out well, if the convention is held during the middle or the latter part of August, but it will not be possible if the convention is held in June. Of course, you will please understand that the Section on Education and Legislation does not desire in any manner to interfere with the most suitable date for holding the convention, even if this should prevent altogether the carrying-out of its tentative program. However, I believe it but right that the Council should be made acquainted with the facts herein stated."

General Secretary Day writes:

"I have Council Letter No. 5. I presume that the matter of fixing the date for the Sixty-third annual meeting at San Francisco is now up for discussion. I would call attention to a serious disadvantage in holding our meeting in June and that is, that we would certainly conflict with the meetings of many of the state pharmaceutical associations. Nearly all of the state associations meet in June. There would not be so much conflict if we held our meeting immediately following the A. M. A. meeting, say the week beginning June 28th, but I would think that

the date suggested by the local committee, August 9th to 14th, is to be preferred.

The suggestion of the local committee to so arrange the program that the business meetings would not interfere with the entertainments conveys a subtle irony and raises the question of whether we are going to San Francisco chiefly to be entertained. As the Sage of East Aurora has remarked, "If cigarette-smoking interferes with your business cut out the business," but, seriously speaking, I believe that the entertainments are a great attraction and will be so especially at the coming meeting, but it will be difficult enough to hold our members of the sessions when there is so much to be seen at the Exposition. If the method of handling simultaneous sessions can be developed so successfully as it was at the recent Detroit meeting, perhaps it may be possible to condense our business sessions within five days or even within four so as to allow more time for the entertainments. To make entertainment the prime feature, however, I believe would be a serious mistake."

No further comments have been received and the vote will now be taken on the recommendation of the Local Committee in Council Letter No. 5, that the time of holding the sixty-third annual meeting of the American Pharmaceutical Association be set for the week of August 9th to 14th, 1915, inclusive.

Do you favor the above recommendation? It will be regarded as *Motion No. 11, (Time of Holding Sixty-third Annual Meeting of the American Pharmaceutical Association, i. e., week of August 9 to 14, inclusive)*.

Local Secretary *Pro-tem*. Schneider writes as follows:

"I am enclosing a copy of a letter from the Secretary of the Canadian Pharmaceutical Association which should receive immediate attention. In order to save time I move that the American Pharmaceutical Association extend a hearty invitation to the Canadian Pharmaceutical Association to meet in San Francisco in 1915 about the same time as the time to be fixed for the meeting of the A. Ph. A."

Canadian Pharmaceutical Association,
Office of the Secretary,
Toronto, Oct. 20, 1914.

Mr. J. A. Barr,
Panama-Pacific Exposition,
San Francisco.

Dear Sir:—I have your letter of the 14th re. the 1915 convention of the Canadian Pharmaceutical Association.

The convention of the Association which was called for Winnipeg this year was postponed on account of war conditions and of course this leaves the place of meeting for 1915 wide open.

The general feeling is that Winnipeg will be the point of assembly but the matter will have to come before the Executive for decision on the 23rd of the month. I will immediately

sion and, as yet, nothing has been done. When a decision is arrived at, will communicate with you.

Yours sincerely,
G. E. GIBBARD, Secretary.

Motion No. 12 (Invitation to Canadian Pharmaceutical Association). Moved by Albert Schneider, seconded by Dr. F. E. Stewart, that the American Pharmaceutical Association extend a hearty invitation to the Canadian Pharmaceutical Association to meet in San Francisco in 1915 at about the same time as that fixed for the meeting of the American Pharmaceutical Association.

The following communication, addressed to the Secretary of the Council, has been received from Charles A. Rogers, of Morgantown, W. Va.:

"I have your esteemed favor of the 4th inst. notifying me of the favorable action of the Council regarding our petition. I, in turn, will take great pleasure in reporting the same to the pharmacists of the state. I note that the Branch is called the Morgantown, W. Va. Branch of the A. Ph. A. I might suggest that it would be advisable to have the nomenclature changed to the West Virginia Branch, etc. This would not convey the idea that it is a localized affair and would facilitate the work of getting pharmacists throughout the state interested. As soon as I am positive that my list of members is correct, I will inform you regarding the number. At the present time I feel sure that we will have twenty-five members. We will act accordingly with regard to the member of the Council. We hope to hold our initial meeting on the evening of November 19th."

Do you favor the change of title of Morgantown, W. Va. Branch, A. Ph. A., to West Virginia Branch, A. Ph. A., as requested above? This motion will be regarded as *Motion No. 13 (Change of Title of Morgantown, W. Va. Branch, A. Ph. A. to West Virginia Branch, A. Ph. A.)*

General Secretary Day writes:

"The expenses of the stenographic report for the Detroit meeting were \$379.18. We had originally appropriated in our 1914 budget, \$250.00, but there was a balance due on reporting the Nashville meeting of \$100.00, which has since been paid, also a small item for the House of Delegates of \$1.50. We now need \$230.68 to cover the expenses of the stenographic report of the last meeting. The Finance Committee has approved of this proposed addition to the budget.

Motion No. 14 (Appropriation of \$230.68 for Stenographic Services). Moved by W. B. Day, seconded by J. A. Koch, that an addi-

tional appropriation of \$230.68 be made for stenographic services for the Detroit meeting.

J. W. ENGLAND,
Secretary of the Council.



COUNCIL LETTER No. 7.

Philadelphia, Pa., November 24, 1914.

To the Members of the Council:—

Motion No. 11 (Time of Holding the Sixty-third Annual Meeting of the American Pharmaceutical Association, i. e., the week of August 9 to 14, inclusive), *No. 12 (Invitation to Canadian Pharmaceutical Association)*, *No. 13 (Change of Title of Morgantown, W. Va. Branch, A. Ph. A., to West Virginia Branch, A. Ph. A.)*, and *No. 14 (Appropriation of \$230.68 for Stenographic Services)*, have each received a majority of affirmative votes.

Dr. H. M. Whelpley writes as follows:

"*Entertainment at the 1915 Meeting*. I have read with much interest the suggestion that the real work of the A. Ph. A. at the 1915 meeting be so arranged that it will not interfere with the ambition and good intentions of the local Committee of Arrangements, in charge of the entertainments. Our meeting at Detroit was one of the most enjoyable in the long series of A. Ph. A. conventions. It was also a meeting for real work. What may be termed the 'business' of the association was given first consideration, as I feel it should be every year. If we are going to San Francisco merely for entertainment, I believe it would be better to hold an A. Ph. A. meeting in some central location and then go on to the Pacific Coast for our entertainment. The A. Ph. A. meetings are generally held with a view of increasing the local interest in the association. I hope the recently formed San Francisco Branch will make a good showing. We need more members on the Pacific Coast, more papers from them for the different sections and larger delegations at the annual meetings. The San Francisco Branch has the opportunity of accomplishing much good work in this direction."

At the fourth general session of the recent annual Convention held at Detroit, the "Committee on the Recommendations of the Retiring General Secretary and Editor" (Journal A. Ph. A., Nov., 1914, 1503), recommended the following:

"Your committee in conclusion recommends that, in testimony of the unusually valuable services of the former General Secretary and Editor, James H. Beal, that an honorarium of \$1000 be presented to him with the grateful thanks of the Association, and

with the expression of the hope that many years of usefulness be vouchsafed to him."

The recommendation was referred to the Council for consideration.

Dr. Beal was not present at the meeting and it was not known whether an honorarium would be acceptable to him or not, and there was no one present to speak for him. Hence, the Council-reference.

The Secretary of the Council wrote Dr. Beal as to his wishes in the matter and the following reply has been received:

"While I am grateful to those who thought of voting me an honorarium, I feel that a precedent of this sort should not be set. If such an honorarium should be voted me by the Council, I would expect to immediately turn it over to the Endowment Fund."

The term of Thomas F. Main, of New York, as a member of the Commission on Proprietary Medicines, has expired, and he is nominated to succeed himself by C. A. Mayo, seconded by J. W. England.

Do you favor his re-election? This will be known as *Motion No. 15 (Election of Thomas F. Main as a member of the Commission on Proprietary Medicines for term expiring 1919)*.

It is the business of the Council to annually designate the member of the Commission on Proprietary Medicines who shall act as Chairman. In 1914, Dr. James H. Beal acted as Chairman. Do you favor his re-appointment? This will be known as *Motion No. 16 (Appointment of Dr. James H. Beal as Chairman of Commission on Proprietary Medicines)*.

Albert Schneider, Local Secretary *pro-tem*, writes (November 18, 1914) that:

"I have just written a letter to Dr. W. N. Nagai, President of the Pharmaceutical Society of Japan urging the Society to meet in San Francisco in 1915. I hereby move that The American Pharmaceutical Association extend a hearty invitation to the Pharmaceutical Society of Japan (Nippon Yaku-gakkwai) to meet in San Francisco in 1915 at the same time as the A. Ph. A. Dr. Nagai's address is No. 8, Shino-miyabicho, Ushigomeku, Tokyo, Japan.

The Local Committee will have a meeting write you of any recommendations and actions taken. I will lay your communications before the committee.

I may inform you that the work at the Exposition is well ahead of the schedule time. I may also state that the Exposition will prove a wonderful revelation to all visitors.

I greatly fear that the A. Ph. A. Exhibit plan will have to be abandoned. If anything

is to be done it must be done *at once*. The San Francisco Branch of the A. Ph. A. at the meeting of November 10, were in favor of the proposed exhibit but were in doubts as to the source of the funds necessary to put the proposition into execution."

Do you favor extension of invitation to Pharmaceutical Society of Japan to meet in San Francisco in 1915 at the same time as the A. Ph. A., as moved by Albert Schneider? This will be known as *Motion No. 17 (Invitation to Pharmaceutical Society of Japan)*.

Motion No. 18 (Election of Members). You are requested to vote on the following applications for membership:

No. 37. Frances Edith Hindman, University of Washington, College of Pharmacy, Seattle, Wash., rec. by C. W. Johnson and Forest J. Goodrich.

No. 38. Thomas J. Casey, 227 High Street, Morgantown, W. Va., rec. by Charles H. Rogers and J. H. Beal.

No. 39. Amos Jones, 543 E. Thompson St., Philadelphia, Pa., rec. by Quintus Hoch and George M. Beringer.

No. 40. Ernest Franklin Trolinger, 1410 Forrest Ave., Nashville, Tenn., rec. by E. A. Ruddiman and J. T. McGill.

No. 41. Mrs. Maria Gonzalez Llerena, Jesus del Monte 518, Havana, Cuba, rec. by W. B. Day and J. W. England.

No. 42. Eugene A. McLadden, Cor. Main and Mercer Sts., Hackensack, N. J., rec. by George M. Beringer and G. M. Beringer, Jr.

No. 43. Joseph J. Easley, Hastings, Pa., rec. by Charles H. Rogers and Wm. H. Moore.

No. 44. A. T. Davis, Warren, Ark, rec. by W. R. Appleton and A. L. Morgan

No. 45. Cyrus Jacob Fuhrman, Coquille, Oregon, rec. by M. E. Everitt and J. Lee Brown.

No. 46. Charles B. Clark, P. O. Box 387, Atchison, Kansas, rec. by M. Noll and L. D. Havenhill.

No. 47. Charles C. Orr, 541 E. 112th St., Chicago, Ill., rec. by W. B. Day and E. N. Gathercoal.

No. 48. Joseph Trienens, 819 Buena Ave., Chicago, Ill., rec. by William Gray and William B. Day.

No. 49. John Smith Donnet, 1225 Hull St., Baltimore, Md., rec. by H. A. B. Dunning and O. W. Muehlhause.

No. 50. Andrew Grover DuMez, University of the Philippines, Manila, P. I., rec. by Edward Kremers and Emerson R. Miller.

No. 51. Campbell A. Neptune, 600 Market St., Parkersburg, W. Va., rec. by Charles H. Rogers and W. A. Ream.

J. W. ENGLAND,

Secretary of the Council.

415 N. Thirty-third Street.

COUNCIL LETTER No. 8

Philadelphia, Pa., December 1, 1914.

To the Members of the Council:—

Motions No. 15 (*Election of Thomas F. Main as member of Commission on Proprietary Medicines for term expiring 1919*), No. 16 (*Appointment of Dr. James H. Beal as Chairman of Commission on Proprietary Medicines*) and No. 18 (*Election of Members; Applications from Nos. 37 to 51 inclusive*), have each received a majority of affirmative votes.

With reference to Motion No. 17 (*Extension of Invitation to Pharmaceutical Society of Japan to meet in San Francisco in 1915 at the same time as the A. Ph. A. meeting*), the following communication has been received from William C. Alpers:—

"The motion to invite the Pharmaceutical Association of Japan to meet with us appears to me odd and untimely. What is the cause of such a move? I cannot understand it. To receive an invitation from The American Pharmaceutical Association is certainly an honor, the highest probably that American pharmacy can extend. Why offer this honor to the Japanese with whom we have so little in common and who for various reasons are objectionable to many of us?"

If we are to engage in international courtesies why not invite the nations that are related to us in blood, science and civilization? Why not invite the English, French, German, Italian pharmaceutical associations? I can find no motive whatsoever why we should invite men whose language we do not understand, whose habits and manners are different from ours and with whom many of us and our ladies would not wish to associate socially."

If any members of the Council who have voted wish to change their vote on Motion No. 17, they can do so.

J. W. ENGLAND,

Secretary of the Council.



COUNCIL LETTER No. 9.

To the Members of the Council:—

Further comments have been received upon Motion No. 17 (*Extension of Invitation to Pharmaceutical Society of Japan to meet in San Francisco in 1915 at the same time as the A. Ph. A. meeting*), as follows:—

Frederick J. Wulling writes:—

"Concerning Motion No. 17—Invitation to Pharmaceutical Society of Japan; I would say that in matters like this we should go slowly and with deliberation. To extend an invitation implies the assumption of all responsibilities that devolve upon hosts. I do not know what would be expected of the A.

Ph. A., if it invited a foreign pharmaceutical body. No doubt we would have to live up to the customs prevailing in the country to whose association we issue the invitation. On the whole, I feel that we give too little consideration to most of our transactions. A matter of such significance as an invitation to a foreign body to meet with us should have the fullest kind of thought by a competent committee and such a committee should have sufficient time to enable it to make its report and possibly recommendations authoritative. While I would be more than delighted to greet our Japanese colleagues within our own territory, I yet would urge that we think the matter of an invitation over very carefully.

Of course it should be noted that the letter written by Dr. Schneider to the President of the Pharmaceutical Society of Japan was an individual letter not binding upon the A. Ph. A. in any wise. I feel very strongly that we should not vote upon Motion 17 without further consideration."

Dr. Francis E. Stewart writes:—

"Regarding the motion to invite the Pharmaceutical Society of Japan to the meeting in San Francisco in 1915 at the same time as the A. Ph. A. meeting, I voted in the affirmative, but since the matter is still open for consideration, I wish to reconsider and vote against it.

My reasons for so doing are not the same as those of Mr. William C. Alpers, for I have no objection whatever to cultivating international friendship and good will between all of the nations of Europe, whether related to us in blood, science or civilization or not; but it would seem to me that an invitation of the kind at the present time would be a breach in the neutrality which the United States is maintaining toward the warring factions in various parts of the world, unless we include in our invitation on equal terms the pharmaceutical associations of all of the nations now at war."

George H. Schafer writes:—

"Propinquity of Japan and time was probably the cause for Mr. Schneider's motion No. 17. As I may have erred in voting yes on such motion, I would favor its reconsideration and amendment to meet the well-taken objections of William C. Alpers. If in order, will move its reconsideration or will second such motion if made by others."

No motion for a reconsideration of Motion No. 17 is necessary at this time, as no vote on the motion has been announced. The subject is still before the Council for consideration and members may change their votes, or table the motion, or substitute it by another motion. Members are asked to express their opinions on the subject.

J. W. ENGLAND,
Secretary of the Council.