

EDITORIAL NOTES

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SPHAGNUM MOSS AS A SURGICAL DRESSING.

Necessity has developed a more extended use of sphagnum moss in Europe as a surgical dressing; however, it has been demonstrated that in some respects the moss is actually superior to cotton for this purpose.

During a recent meeting of the Pharmaceutical Society in Edinburgh, Alexander McCutcheon described the harvesting of sphagnum moss, and in the discussion which followed, a demonstration of the absorbent powers of the moss was made. The sample was tightly compressed, but the instant water was applied it swelled, and not only does the moss absorb relatively more water, but the absorption takes place both upwards and laterally and a discharge does not come through to the surface as is the case in the application of cotton, wherein the absorption is in one direction.

THE FIRST ENDOWED DRUG STORE.

According to the *Apothecary*, Middleboro, Mass., is to have an endowed drug store, when certain provisions of the will of David G. Pratt, once a member of the Governor's Council, become effective. Mr. Pratt's will, which disposes of an estate of \$276,000, was admitted to probate in the Plymouth county probate court.

The entire estate is left to the widow, Mrs. Marion Grace Pratt, who is named as executor. Upon her death one-third of the estate is to be set aside as the "David G. Pratt trust fund" for the establishment of a pharmacy at Middleboro, where Mr. Pratt spent the greater part of his life. The establishment, the will provides, is to be in charge of a registered pharmacist, and supplies are to be furnished free to "deserving and needy persons" and also to "sojourners." A recommendation from a trustee or a physician will be necessary.

However, it is set forth that drugs and supplies will be sold for cash to those able to pay

and that if any surplus accumulates this money is to be devoted to the building of roads and sidewalks.

THE ASPIRIN QUESTION.

At the meeting of the National Drug Trade Conference held in Washington, January 16, 1917, a committee was appointed "to inquire into and report as to whether the word 'aspirin' will become public property after the expiration of the Hoffmann patent on acetyl salicylic acid." This committee conferred with Messrs. R. S. and A. B. Lacey, patent counsel, of Washington, D. C., who have rendered the following opinion, which is submitted as the report of the committee to the conference and is released by the National Drug Trade Conference for the information of the drug trade at large, *but necessarily without assuming any obligation to any one who may choose to act upon the opinion*.

Space will not permit the publication of the complete report or opinion but is given in part only and also that of the attorneys for The Bayer Company, Inc. It will be readily seen that there are differences of opinion and that the question will very likely be decided in court.

BURDEN OF PROOF.

The burden of proving that aspirin has become a generic name will, of course, be upon the manufacturer or other person who enters upon the making and marketing of the drug and is sued for infringement of the trademark. It is thought, however, that the burden will not be excessive. Expressions used by the courts in the cases reported in 179 Fed. Rep., 707, and 203 Fed. Rep., 476, above mentioned, indicate that druggists and pharmacists used the term "aspirin" interchangeably with the term "acetyl salicylic acid," and are, therefore, persuasive that aspirin can and has become a generic name. These cases, moreover, are thought to establish beyond any question that the patent and not the trade-mark gave value to the article. The drug is fre-

quently referred to in newspaper articles as though it were a common well-known drug, the name being printed in the ordinary type without quotations, and without being distinguished in any way from the accompanying text and being mentioned in exactly the same manner as an apple or an orange would be mentioned.

An extensive advertising campaign has been incorporated within the last year by the Bayer Company, having for its object the identification of the Bayer Company with the manufacture of aspirin. The advertisements refer to Bayer tablets of aspirin, which in itself is a tacit admission that aspirin is a generic name of an article and is not a designation of the origin of the article. An advertisement before the writer, emphasizes an insignia consisting of a circular space or disk upon which the name "Bayer" appears in the form of a cross and, consequently, points to this insignia rather than to the name "aspirin" as a designation of the place of origin. It is true the advertisement contains a reference to the registration of the trade-mark "aspirin," but this reference is in such small type that it cannot counteract the admission to be inferred from the main text of the advertisement that aspirin has become a generic name.

For the reasons set forth it is thought the manufacture of the patented drug may be undertaken by any one after the expiration of the patent on the 27th inst., and that the drug may be marketed under the name "aspirin," provided it is so marked as to distinguish it from the product of Bayer & Co., for instance, "John Doe's Aspirin."

The registration of the trade-mark in foreign countries is thought to be immaterial, as the question to be answered is: Has the word "aspirin" become a generic name in the United States for pure acetyl salicylic acid?

The word "aspirin" is not used as a trade-mark unless it is applied to the goods or the packages containing the same. Hence, it is permissible to mark the packages acetyl salicylic acid and in newspapers and circulars advertise the fact that aspirin and acetyl salicylic acid are the same thing. Such a course seems to have been judicially sanctioned in *Celluloid Mfg. Co. vs. Cellonite Mfg. Co.*, 32 Fed. Rep., 94, a decision of the Circuit Court prior to the decision of the Supreme Court in the Singer case.

Respectfully submitted,

R. S. & A. B. LACEY,
A. B. LACEY.

OPINION OF GIFFORD & BULL, ATTORNEYS
FOR THE BAYER COMPANY, INC.

The following letter from Gifford & Bull, attorneys for The Bayer Company, Inc., sets forth the grounds upon which that company is acting:

In my opinion your right to the exclusive use of "aspirin" as a trade-mark to distinguish the Bayer manufacturers of acetyl salicylic acid will not expire with the patent. In forming this opinion I have fully considered the Singer, Lanolin and other decisions. None of them are applicable. The facts appertaining to "aspirin" are the reverse of those upon which such decisions depended. Some of these facts are the following:

1. The patent itself gave the name "acetyl salicylic acid" to the therapeutical substance, and the most that the public can acquire by the expiration of the patent is the right to designate the substance by that name.

2. Prior to the issue of the patent, February 27, 1900, the name "aspirin" had been adopted and applied as the trade-mark distinguishing the Bayer manufacture both in this country and abroad.

2. "Aspirin" was registered as the trade-mark of the Bayer manufacture in the United States Patent Office May 2, 1899, and therefore prior to the date of the patent, and no subsequent patent can detract from the exclusive rights acquired by this registration under the trade-mark statute.

4. In all foreign countries the therapeutical substance of Bayer manufacture is distinguished by the name "aspirin" from all other manufactures of the same substance which are designated by the name "acetyl salicylic acid," or its translation, often coupled with the name of the house manufacturing it, or even by arbitrary names which were registered by the manufacturers as independent trade-mark names.

5. "Aspirin" was registered as the trade-mark of the Bayer manufacture not only in the United States, but in most civilized countries.

6. During the term of the patent the substance was imported extensively into the United States by infringers as acetyl salicylic acid in defiance of the United States patent, and was known and sold by druggists all over the country.

7. By no act or word have you ever indicated the intention to dedicate the name "aspirin" to any other manufacture of the article, but in labels, advertisements and propaganda you have informed the public that this name was not that of the article, but of the Bayer manufacture thereof.

8. Official publications, such as the Pharmacopoeia, the Dispensatory, the publications of the American Medical Association, and the government literature, have applied the name "Acetyl Salicylic Acid" to the therapeutical substance.

9. The purity and uniformity of the Bayer manufacture have been so jealously guarded in all the "aspirin" sold ever since its introduction in all countries of the world that the value of the trade-mark "Aspirin" as the representative of this purity and uniformity rises superior to that of the United States patent, both with respect to the public and yourselves, particularly in view of the therapeutical uses of the substance.

10. "Aspirin" has been sold with the following statement, or its equivalent, on the label:

"The name of the substance is 'Monoacetic-acidester of salicylic acid.' The word 'aspirin' identifies it as the manufacture of the Farben-fabriken vorm. Friedr. Bayer & Co., Leverkusen, Germany, or of the assignee of its manufacturing good will in the United States."

The label also contained the following:

"The word 'aspirin' is also protected by registered trade-mark No. 32805."

All of the above facts concur in supporting the conclusion that your exclusive rights in the trade-mark "aspirin" will in no way be affected by the expiration of the patent on acetyl salicylic acid.

Yours truly,

(Signed) LIVINGSTON GIFFORD.

REVISED C. V. D. A. BROCHURE.

A Revised C. V. D. A. Brochure has been prepared by George Engelhard with the assistance of the officers of the Chicago Veteran Druggists' Association, and is from the press of the *Western Druggist*, published by G. P. Engelhard & Co.

The object of this interesting booklet is to preserve a record of the members who have gone before, as well as of those who now comprise the membership. The work of the publishers is excellent and the engravings of the members are well arranged. There are also a number of illustrations that present the members in groups on various occasions and form a part of the history of this organization. On the cover is a carnation and under it the inscription, adopted by the Association as a motto, "Cheers for the living—tears for the dead." The occasion for the presentation was the twentieth anniversary, and the booklet is dedicated to the founder, Thomas Nevin Jamieson.

STANDARDS FOR EDIBLE VEGETABLE FATS AND OILS.

The U. S. Department of Agriculture in F. I. D. 169 outlines the following definitions for edible vegetable fats and oils:

Edible fats and edible oils are such glycerids of the fatty acids as are recognized to be wholesome foods. They are dry and sweet in flavor and odor.

Cacao butter, cocoa butter, is the edible fat obtained from sound cacao beans (*Theobroma cacao* L.), either before or after roasting.

Coconut oil, copra oil, is the edible oil obtained from the kernels of the coconut (*Cocos nucifera* L., or *Cocos butyracea* L.).

Cochin oil is coconut oil prepared in Cochin (Malabar).

Ceylon oil is coconut oil prepared in Ceylon.

Corn oil, maize oil, is the edible oil obtained from the germ of Indian corn, maize (*Zea mays* L.).

Cottonseed oil is the edible oil obtained from the seed of the cotton plant (*Gossypium herbaceum* L.), or from the seed of other species of *Gossypium*.

Olive oil, sweet oil, is the edible oil obtained from the sound, mature fruit of the olive tree (*Olea europaea* L.).

Palm kernel oil is the edible oil obtained from the kernels of the fruit of the palm tree (*Elaeis guineensis* L., or *Elaeis Melanococca* Gart.).

Peanut oil, arachis oil, earthnut oil, is the edible oil obtained from the peanut (*Arachis hypogaea* L.).

Poppy seed oil is the edible oil obtained from the seeds of the poppy (*Papaver somniferum* L.).

Rapeseed oil, rape oil, colza oil, is the edible oil obtained from the seed of the rape plant (*Brassica napus* L.), or from the seed of closely related Brassica species, which yields oils similar in composition and character to the oil obtained from the seed of *Brassica napus* L.

Soy bean oil, soy oil, soja oil, is the edible oil obtained from the seed of the soy bean plant (*Glycine soja* L., *Soja hispida*, Sieb et Zucc., *Soja max.* (L.) Piper).

Sesame oil, gingili oil, teel oil, benne oil, is the edible oil obtained from the seed of the sesame plant (*Sesamum indicum*, De Candolle, *Sesamum radiatum*, Schum and Thonn, *Sesamum orientale* L.).

Sunflower oil is the edible oil obtained from the seed of the sunflower (*Helianthus annuus* L.).