



# Habeas Codfish

*An Introduction to the History of U.S. Food Law*

**T**he first registered trademark in the United States went to a food—Underwood’s Deviled Ham in 1868. Americans eat 350 slices of pizza every second of every day. These and many other fascinating tidbits from the history of U.S. food law can be found in Barry Levenson’s interesting little book *Habeas Codfish* (2001).

Over one hundred years before the U.S. enacted similar national legislation, the State of Massachusetts passed the first comprehensive U.S. food law in 1785. Noting in its preamble that “evil disposed persons, from motives of avarice and filthy lucre” were selling “diseased, corrupted, contagious and unwholesome provisions” the State was moved to act but the federal government steadfastly refused to get into food regulation. However, the “avarice and filthy lucre” problem persisted, then in 1906 Upton Sinclair published *The Jungle*, and finally the United States got its famous *Food and Drug Act* the same year. (Canada’s first comprehensive legislation was *The Adulteration Act* of 1884).

Levenson’s chapter on the history of food labelling law is both scary and funny. As anyone who has ever dealt with the arcane and mind-numbing complexity of Canadian food labelling laws will know, a certain sense of humour is essential to maintain one’s sanity. He provides a clear description of the facts and law in the leading American case, *United States v. Ten Cases, More or Less, of Bred Spred* (8<sup>th</sup>, Cir. 1931). Bred Spred was a strawberry flavoured jelled substance that was 17% strawberry. F.D.A. inspectors seized the product as a “jam imposter” because, as everyone knows, jam is at least 50% fruit. But under the law at the time, the F.D.A. had to prove the jam was adulterated and Bred Spred won the case. This famous defeat demonstrated the weaknesses of the 1906 *Act* for labelling issues and led directly to the 1930 passage of the revised *Food, Drug and Cosmetics Act*, which required the establishment of “standards of identity” for hundreds of products. (Canada has had the concept of “standards of identity” since 1890 and the principle that non-compliance made

the food “adulterated” was maintained in the new Act of 1920, titled the *Food and Drugs Act*. This is the origin of the monster we have today).

Another chapter describes how a French chemist named Hippolyte Mege-Mouriez won a prize offered by Louis Napoleon III to come up with a palatable and cheap substitute for butter. The U.S. patent for oleomargarine was granted in 1873, when he began manufacturing it and for the next hundred years, the dairy industry has used every legal means to protect the consumer from this “fraud on the public”. By 1969, 47 states had laws that specifically applied to margarine. Hundreds of cases have gone to trial. Levenson is amused that it wasn’t until 1967 that Wisconsin finally permitted the sale of coloured margarine. I guess he hasn’t heard of our province of Quebec.

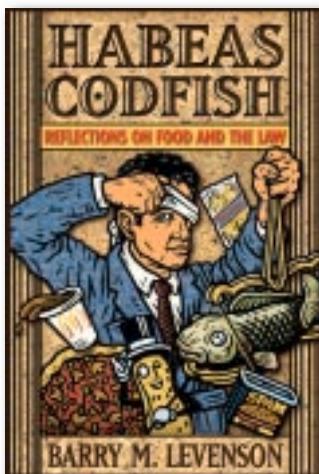
Another chapter tells the story of a young Italian immigrant to Pennsylvania who bought a peanut roaster for \$4.50 and started the Planters Nut and Chocolate Company. In 1916 he ran a contest among high school students to find a catchy logo for the company. The winner, Antonio Gentile, won the \$5.00 first prize for a sketch of a humanized peanut. Mr. Peanut was born and by 1950 it was the “most successful trade symbol of its kind to be found anywhere”. When another company tried to use a similar mark, Planters sued and the case of *Planters Nut and Chocolate Co. v. Crown Nut Co.* (CCPA, 1962) became the landmark case in American food trademark law. The chapter, The Legacy of Mr.

Peanut, is a truly entertaining romp through the history of American food trademark law.

*Habeas Codfish* does not purport to be a comprehensive history of American food law. I highly recommend it, though, and only wish we had something similar for this country.

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Ronald L. Doering, B.A., LL.B., M.A., LL.D., is the former president of the Canadian Food Inspection Agency and now practices food law in the Ottawa offices of Gowling Lafleur Henderson LLP. Email: [ronald.doering@gowlings.com](mailto:ronald.doering@gowlings.com)



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