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## 2 Former Executives Of Beech-Nut Guilty In Phony Juice Case

By LEONARD BUDER  
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A former chief executive of the Beech-Nut Nutrition Corporation and another former executive were found guilty yesterday of violating Federal laws by intentionally distributing phony apple juice intended for babies.

After five days of deliberations, the verdict was returned by a jury in Federal District Court in Brooklyn that had heard testimony since mid-November. Last fall Beech-Nut, the nation's second-largest baby food maker after the Gerber Products Company, had pleaded guilty to charges in the case.

Thomas H. Roche, the lead Government prosecutor, praised the verdict as an important victory for consumers. He likened the actions of the convicted defendants to "a hand reaching out from a store shelf and taking money out of the pockets of consumers."

The two executives, along with Beech-Nut and two suppliers, had been indicted in November 1986. They were accused of intentionally shipping adulterated and misbranded juice to 20 states, Puerto Rico, the Virgin Islands and five foreign countries with the intent to defraud and mislead.

The indictment charged that the product Beech-Nut had been marketing as pure apple juice was actually made from beet sugar, cane sugar syrup, corn syrup and other ingredients, with little if any apple juice.

Niels L. Hoyvald, 54 years old, who was president and chief executive of Beech-Nut at the time of the indictment in 1986, was found guilty of some 350 counts of violating the Food, Drug and Cosmetic Act. Each count carries a possible three-year prison term and a \$10,000 fine.

John F. Lavery, 56, former vice president for manufacturing at the Beech-Nut plant in Canajoharie, N.Y., 45 miles west of Albany, was found guilty on 448 counts, including the conspiracy and mail fraud charges.

The maximum penalty on any count would be five years in prison, although it is likely that both defendants would serve the sentences concurrently. The jury could not reach a verdict on about 80 other counts against Mr. Hoyvald involving purported violations of the Federal act, as well as one count of conspiracy and 18 counts of mail fraud. Judge Thomas C. Platt declared a mistrial on those charges, which carry maximum five-year prison terms. The Government, if it wishes, could seek a new trial on those counts.

Both Brendan V. Sullivan Jr., who represented Mr. Hoyvald, and Steven Kimelman, who represented Mr. Lavery, declined to comment on the verdict but said they would appeal.

Among the Government witnesses at the trial was a Beech-Nut chemist who called the

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bogus product, which had been labeled as pure fruit juice, "a chemical cocktail." Last Fall's Court Proceeding

During the trial Mr. Roche, an Assistant United States Attorney, said, "This case is a story of corporate greed and irresponsibility." He said the defendants' "main concern was making money for Beech-Nut, even if it meant selling a phony product."

Last November Beech-Nut pleaded guilty to 215 counts charging that it shipped mislabeled products purporting to be apple juice with intent to defraud and mislead the public.

As part of the plea agreement, 145 other counts, including conspiracy and mail fraud, were dismissed, and the company agreed to pay a \$2 million fine. Government officials said they believed the fine was at least six times as great as any paid under the Food, Drug and Cosmetic Act, which became law in 1938.

Beech-Nut's current president, Dr. Richard Theuer, said last November that the misrepresented juice, although not what it was supposed to be, presented no danger to health. He said the company had taken measures to prevent any similar incident.

Beech-Nut also agreed to pay \$140,000 in investigative costs to the Food and Drug Administration. Beech-Nut, a subsidiary of Nestle S.A. of Switzerland, is based in Fort Washington, Pa.

At the same time, two other defendants, both suppliers of the bogus apple juice concentrate used by Beech-Nut, pleaded guilty. They were Zeev Kaplansky, president of the defunct Universal Juice Inc., and Raymond H. Wells, owner of the defunct Food Complex Company.

Earlier last year Beech-Nut settled a class-action suit against it involving the phony apple juice for \$7.5 million. The settlement, which was approved in Federal District Court in Philadelphia, provided \$2.5 million in Beech-Nut and affiliated products to certain retailers and a \$5 million cash fund for consumers who bought the misrepresented juice.

At the trial the Government introduced evidence to show that from 1978 until June 1982, Beech-Nut bought adulterated and misbranded apple juice concentrate from Universal Juice and Food Complex and used this in apple juice and mixed apple juice products.

Prosecutors said that Mr. Lavery knew of the purchase of the bogus concentrate as early as 1978 and that Mr. Hoyvald, who became president of Beech-Nut in April 1981, knew of its use the previous January, while he was still senior vice president in charge of marketing.

A key prosecution witness was Jerome LiCari, who was director of the Beech-Nut research and development department until he left in 1982. Letter From 'Johnny Appleseed'

Mr. LiCari said he tried unsuccessfully to get the company to stop using the concentrate in question, which it was able to buy at 20 to 25 percent below the price of competing apple juice concentrates. He said that in 1983 he sent an anonymous letter about the situation to the Food and Drug Administration, signing the letter "Johnny Appleseed."

Mr. Hoyvald, who testified in his own defense, said he first learned of the situation on June 25, 1982, from a private investigator for the Processed Apples Institute. After that date Mr. Hoyvald, acting in good faith, sought and acted upon the legal advice of a number of lawyers, and thus should not be convicted, Mr. Sullivan told the jury.

But Mr. Roche, who is on the staff of the United States Attorney's Office for the Eastern District of New York, said that Mr. Hoyvald, after that date, was trying to stall to give the company time to distribute the bogus apple juice.

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The prosecutor said the company saved about \$750,000 by buying the adulterated concentrate and avoided a loss of about \$3 million by selling the bogus juice.

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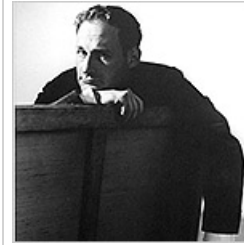
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