

WERNER *v.* REINHARDT AND ANOTHER.

*Circuit Court, S. D. New York.* September 29, 1881.

1. DESIGN IN  
TRIMMING—INFRINGEMENT—INJUNCTION.

A design for trimming, produced by embossing on fluting machinery, confers the exclusive right to impress that appearance, and an imitation of the design will be restrained by injunction.

In Equity.

*Arthur v. Briesen*, for orator.

*Jacob L. Hanes*, for defendants.

WHEELER, D. J. This suit is brought for relief against infringement of design letters patent No. 11,186, granted to the orator on application made March 19, 1879, for a design for trimming, produced by embossing on fluting machinery, dated May 6, 1879. The orator makes and sells trimming according to his patented design, as he claims it to be, and the defendants admit having made the same thing; but they set up in defence that the patent does not cover that design; that the orator was not the original and first producer of the design which it does cover; and that so much of the design as they have made use of had been in public use and on sale, with the consent and allowance of the orator, for more than two years prior to his application for the patent.

The impression created at the hearing was that the defendants had not, in view of all the evidence on both sides, sustained either of the last two defences by the requisite measure of proof. A careful review of all the evidence confirms that impression. The specification and drawings of the patent, taken all together, show a row of embossed, smooth, oblong, and half-cylindrical projections between and parallel with two rows of ordinary fluting, which are the prominent and original features of the design, and are

what the orator's trimming, made under the patent, show. This design is what he invented. It proved attractive, and his patent conferred upon him the exclusive 677 right to impress that appearance upon trimmings. The defendants appear to have infringed upon that right.

Therefore, there must be a decree for an injunction and an account, according to the prayer of the bill, with costs.

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