

nical trade-mark or trade-name. The authorities in abundance declare this to be the law.

In *McLean v. Fleming*, 96 U. S. 254, the supreme court say:

"Nor is it necessary, in order to give a right to an injunction, that a specific trade-mark should be infringed; but it is sufficient that the court is satisfied that there was an intent on the part of the respondent to palm off his goods as the goods of the complainant, and that he persists in so doing after being requested to desist."

Of course, a party cannot be debarred from the right to honestly use his own name in advertising his goods and putting them on the market, but where other persons bearing the same surname have previously used the name in connection with their goods, in such manner and for such length of time as to make it a guaranty that the goods bearing the name emanate from them, they will be protected against the use of that name, even by a person bearing the same name, in such form as to constitute a false representation of the origin of the goods. To illustrate: The complainants and the defendant bear the same surname. Each is a dealer in "Landreths' Extra Early Peas." While the defendant has the right to use his own name in advertising his peas and putting them on the market, he has not the right to use it in such manner as to lead dealers and purchasers to suppose that, when in fact purchasing his peas, they are purchasing the peas grown and sold by the complainants. Adjudged cases thus enunciate the law. As is stated in one of them, "no man has the right to dress himself in colors, or adopt and bear symbols, to which he has no peculiar or exclusive right, and thereby personate another person, for the purpose of inducing the public to suppose, either that he is that other person, or that he is connected with and selling the manufacture of such other person, while he is really selling his own." See, also, *Holloway v. Holloway*, 13 Beav. 209. Many other cases of similar and uniform purport might be cited.

Now, as I have said, the defendant's label, is, as it seems to me, a palpable imitation of the complainants'. In the color of ink used, in the arrangement of the words, and in the general style of the label, he has, so to speak, dressed his goods in the garb previously adopted by the complainants. Whether intended or not, this necessarily operates as a fraud upon them, and upon the public. If the defendant has the right to use the same words as those which constitute the complainants' label, he ought to accompany them with some clear *indicia* of the source of the goods. He seems to have done so in his late issue of circulars and advertising cards. In the absence of anything in the inscription he places on his bags, distinctly denoting that he is the producer and seller of the peas in which he deals, called "Landreths' Extra Early Peas," he evidently leads or may lead purchasers to believe that in purchasing his peas they are purchasing the peas grown and sold by the complainants. This appears from affidavits presented on this motion. Such abandonment of their label

or inscription by the complainants as deprives them of the right to be protected in the use of the same, is, I think, not shown.

The case seems to be a clear one for a preliminary injunction to the extent indicated, and upon the execution by the complainants of a bond in the usual form, in the sum of \$2,000, with surety to be approved by the clerk, an injunction, *pendente lite*, will issue, restraining the defendant from placing on the bags used by him in putting his peas on the market, a label or inscription resembling in design, form, and arrangement, or collocation of identical words, the label or inscription of the complainants, as does the label now used by the defendant.

The printing of the letter "A" over the word "Landreths'," by the defendant, on the bags of peas more recently sent out by him, does not, in the form and style in which it is printed, relieve his label of its tendency to mislead.

GOODYEAR RUBBER Co. v. DAY and another.¹

(Circuit Court, E. D. Missouri. October 11, 1884.)

1. TRADE-MARKS—INFRINGEMENT.

No manufacturer will be permitted to stamp upon or attach to his goods the name of another manufacturer.

2. SAME—NAME OF PATENT.

Semble, that after the expiration of a patent no manufacturer of the patented article can appropriate the name, or the principal part of the name, of the patent as a trade-mark.

In Equity.

This is a suit to restrain the defendants from advertising or selling rubber goods, not manufactured by the complainant, with the name of "The Goodyear Co." in any manner annexed or attached thereto.

Thos. T. Gantt and A. & John F. Lee, for complainant.

McFarland, Reynolds & Harrison, for defendants.

TREAT, J., (*orally*.) The litigation connected with this Goodyear rubber business I am fully conversant with, as the Reports are full of it, and during 20 odd years I have had to look into the matter in causes pending before me. It seems to the court this is an effort to appropriate the name, "Goodyear." The patent has expired. Now, if, after the termination of the patent, a man can adopt the name of the patent, and use it as a trade-mark, he is, in violation of the laws of the United States, getting an exclusive right which does not belong to him. The case before Judge WALLACE, as I heard it read, is

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.