

DE KUYPER AND OTHERS *v.* WITTEMAN AND
OTHERS.

Circuit Court, S. D. New York. January 12, 1885.

TRADE-MARK—INFRINGEMENT—PRINTING AND
SELLING IMITATION LABELS TO THIRD
PARTIES.

Printing and selling labels in imitation of a trade-mark, with the purpose of enabling the parties to whom the labels are sold to palm off their goods upon the public as the goods of the owner of the trade-mark, is a violation of the rights of such owner.

In Equity.

Rowland Cox, for plaintiff.

B. B. Foster, for defendant.

WALLACE, J. The demurrer in this case is without merits. The complainants, upon the facts shown in the bill of complaint, have a good title to their trade-mark, and a case for its protection irrespective of their statutory rights under the registration in the patent-office. As the necessary diversity of citizenship exists between the parties, they are entitled to invoke the jurisdiction of this court.

Upon the allegations of the bill the defendants are actively engaged in assisting third persons to use the complainants' trade-mark in violation of their rights. The mere act of printing and selling labels in imitation of the complainants' might be innocent, and, without evidence 872 of an illicit purpose, would not be a violation of the complainants' rights. It is otherwise, however, when this is done with the obvious purpose of enabling others by the use of the labels to palm off their goods upon the public as the goods of the complainants.

The demurrer is overruled, with costs. Defendants may answer upon payment of costs.

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