

PORTUONDO V. MONNE AND OTHERS.

Circuit Court, S. D. New York. July 13, 1886.

TRADE-MARK—INJUNCTION—GENERAL USE OF SYMBOL.

Preliminary injunction denied where affidavits of defendants make it doubtful whether the plaintiff has so had exclusive use of symbols sought to be restrained as to make their use by defendants likely to pass their wares as his.

In Equity.

Franklin Swayne, for orator.

Wingate & Cullen, for defendants.

WHEELER, J. The plaintiff shows that he has used the symbols mentioned in his bill of complaint to designate cigars made by him, and that the defendants make use of the same. But the affidavits of defendants show that the same symbols were used by others upon cigar-boxes before, or about the time, the plaintiff began to use them. These affidavits make it doubtful whether the plaintiff has so had the exclusive use of the symbols that the use of them by the defendants serves to pass their cigars as those of the plaintiff. This question cannot safely be determined upon the affidavits, but should be established by evidence regularly taken in due course. The plaintiff does not appear to be entitled to a preliminary injunction. Motion denied.

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