

## WELLMAN &amp; DWIRE TOBACCO Co. v. WARE TOBACCO-WORKS.

*(Circuit Court, D. Minnesota, Third Division. June 10, 1891.)*

## TRADE-MARK—INJUNCTION.

The labels on complainant's tobacco packages had a representation of a shield or banner and an ellipse with a circle, and the words "Smoke and Chew." The colors used were red and yellow. Defendant's labels had the same figures and colors, and the words "Smoke and Chew," and were so much like complainant's that one might easily be mistaken for the other. One was called "Peach Blossom," and the other "Sweet Lotus." *Held*, that defendant's wrappers were a palpable imitation of complainant's, and that their use should be enjoined.

In Equity. Motion for injunction.

*Flandrau, Squire & Cutcheon*, for the motion.

*E. C. Stringer*, opposed.

NELSON, J. A motion is made upon a bill filed by the complainant for a preliminary injunction to restrain the defendant from using a label, brand, and wrapper, so closely resembling the complainant's trade-mark and labels and wrappers as to infringe upon the complainant's rights. The complainant, Wellman & Dwire Tobacco Company, is incorporated under the laws of the state of Illinois, and a citizen thereof, engaged in the manufacture of smoking, plug, and fine cut tobacco, and uses a duly-registered trade-mark, in connection with the mode and manner of putting up the packages of its manufacture for sale. The defendant, the Ware Tobacco-Works, is a citizen of the state of Minnesota, and is charged with infringing the complainant's trade-mark, and using wrappers and devices thereon so that the resemblance is calculated to deceive a purchaser having no cause to use more than ordinary caution, and that the defendant has copied from the complainant by design. It is clear to my mind that the method of preparing in packages the tobacco manufactured by the complainant for market is infringed by the Ware Tobacco-Works. The similitude of the wrappers, and of the labels, in connection with the combination of colors used, is apparent. While the name "Peach Blossom" used by the defendant to designate his tobacco is not similar to "Sweet Lotus," the name used by the complainant, the devices on the wrappers make the general effect of the packages the same. The shield or banner used on the wrappers is similar in shape, and of the same general curvature, and, when the tobacco is put up in the wrappers, forms a part of the defendant's package corresponding to that of the complainant. The entire wrappers and labels so closely resemble each other that dealers and purchasers would be readily misled and deceived. The differences, on critical examination, are capable of discernment and description, but to the eye of an ordinary person who knew the complainant's packages of tobacco, and never had seen the defendant's labeled as they are, and not knowing of any such kind of tobacco in the market, would be misled. The methodical imitation of the wrappers and style of labels appear to be intentional, and not accidental. For instance, when the package is put up for the market, in the center of

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one side of defendant's wrapper is a figure like an ellipse, with a circle in which are the words "Ware Tobacco-Works, St. Paul, Minn." The colors used are yellow, red, and blue. The complainant, on a like side of his wrapper, has an ellipse with a circle in the center in which is a monogram of Wellman & Dwire Tobacco-Works. The colors used are yellow, red, blue, and white; and below the center in each are the words "Smoke and Chew," in letters of the same size and shape. The upper half of the letters used by complainant is red, and the lower half yellow. The upper half of the letters used by defendant is red, and the lower half yellow, except the "or" is all blue, the background of each is black, and both edges of the complainant's wrapper are dark blue, with vine tracings; in the defendant's, light blue, and on one edge two buckles, with words, "Selected Leaf;" on the other two buckles, and the words "Nothing Better." The sides next below on both wrappers are bounded by blue edges inclosed by red bands. While there are variations, the general effect of the wrappers is the same, and they are enough alike to enable the defendant company to deceive the public, who are purchasers, and interfere with complainant. Motion for injunction granted, and it is so ordered.

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THE W. F. BROWN.

THE SUNNY SOUTH.

LAWRENCE v. THE W. F. BROWN and THE SUNNY SOUTH, (SMITH,  
Intervenor.)

(District Court, E. D. Louisiana. May 9, 1891.)

1. ADMIRALTY—WAGES OF PERFORMERS IN FLOATING CIRCUS.

Libelants were performers in a show given in a float or tow at points on the Mississippi river. The tow was propelled by a former ferry-boat, licensed for the coastwise trade. Libelants' chief duty was to perform before the audience, though they also did subordinately some duties connected with running the vessel. The intervening libelant was engineer on the propelling boat or tug-boat. *Held*, that the service of the original libelants was land service, substantially over which the admiralty courts could not take jurisdiction. *Held, also*, that the service of the engineer was maritime, giving to him a maritime lien which could be enforced in a court of admiralty.

2. SAME—WAGES OF ENGINEER ON TUG-BOAT.

Services rendered by an engineer on the propelling tug-boat were strictly maritime, and his libel must be maintained.

In Admiralty. Libel for wages.

*J. Hutchinson*, for claimant.

*J. D. Grace*, for libelants.

BILLINGS, J. This case is submitted upon exceptions to the jurisdiction of the court as a court of admiralty over the cause, both as to the