

I do not decide that there is no infringement, but I think there are such doubts in regard to the question that a temporary injunction should not be granted, especially as assurances were given that a prompt final hearing can be had. The case is in such narrow limits that these assurances can be fully carried out.

JAROS HYGIENIC UNDERWEAR Co. v. SIMONS *et al.*

(Circuit Court, D. Massachusetts. February 15, 1892.)

TRADE-MARK—INFRINGEMENT.

An underwear trade-mark, consisting of a sun surrounded by rays, having a distinctly marked human face, and frequently, though not necessarily, bearing the words "Warmth is Life," is not infringed by a symbol having an imperfect outline, somewhat resembling sun-rays, but whose characteristic feature is a circle inclosing a monogram, the label never bearing the words "Warmth is Life," but always having the name of the manufacturing company using it.

In Equity. Suit by the Jaros Hygienic Underwear Company against Stephen B. Simons and others, for infringement of a trade-mark; Bill dismissed.

William P. Preble, Jr., for complainant.

Charles L. Burdett, for defendants.

COLT, Circuit Judge. This suit is for the infringement of a trade-mark representing the sun. The bill alleges that the complainant, the Jaros Hygienic Underwear Company, is a corporation organized under the laws of the state of New York, and a citizen of that state. The evidence discloses that the trade-mark in controversy is the property of the Jaros Hygienic Underwear Company, a corporation organized under the laws of the state of Illinois, and located and doing business at Chicago, Ill. There is no evidence going to prove that the complainant company succeeded to the property and rights of the Illinois company. Upon the record as it stands, therefore, the complainant has not proved any title to the trade-mark in question. The trade-mark consists of a symbol of the sun, surrounded by rays. This mark is frequently used with the words "Warmth is Life" on the face of the sun, but this is not an essential feature. The trade-mark shows the sun as a circular body, with a distinctly marked face, comprising eyes, nose, and mouth.

The real defendants in this case are the Beach Manufacturing Company of Hartford, Conn., the nominal defendants being their selling agents. While the design which the Beach Manufacturing Company use upon their underwear has an imperfect outline, which might be called the rays of the sun, yet the distinctive characteristic of their label or mark is their monogram, inserted in the center of a circle. They do not use the words "Warmth is Life." They print in prominent characters upon the label the words "The Beach M'fg Co., Hartford, Conn.:" Considering the striking differences between the two designs, I do not

think there is any infringement, and it is not shown that any purchaser has ever been deceived in buying the underwear made by the Beach Manufacturing Company for the underwear made by the complainant company.

Bill dismissed.

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THE JULIA FOWLER.

HANSEN *v.* THE JULIA FOWLER.

(District Court, S. D. New York. January 28, 1892.)

PERSONAL INJURIES—DEFECTIVE ROPE—KNOWLEDGE OF MATE OF VESSEL—ACQUISITION OF SAILOR.

While libellant, a seaman, was employed in scraping the mainmast of the Julia Fowler, on a triangle surrounding the mast, the rope holding the triangle broke, precipitating libellant to the deck, and causing injuries, to recover for which this suit was brought. The evidence showed that the rope was old and spliced, and that the attention of the mate, who rigged the triangle and was in charge of the work, had been called to its character before the accident. It also appeared that all the men considered the rope of doubtful sufficiency, but that they continued the work without objection, without demanding a new rope, and there was no evidence to show a new one would not have been furnished them had they asked for it. *Held*; that this was an acquiescence in the wrongful act of the mate, charging libellant also with negligence. Four hundred dollars damages awarded.

In Admiralty. Libel by Frank S. Hansen against the schooner Julia Fowler for personal injuries. Decree for libellant.

*Carpenter & Mosher*, for libellant.

*Henry D. Hotchkiss*, for claimant.

BROWN, District Judge. On the 7th of August, 1891, the libellant, a seaman on board the Julia Fowler, was at work with two others scraping the mainmast on the triangular frame-work of wood surrounding the mast, which had been rigged up by the mate of the vessel for them to sit on while at work. One side of the triangle was held by the end of the main throat-halliard, which gave way while the libellant was at work, so that he fell upon the deck and suffered injuries which up to the present time have disabled him from work. The above libel is filed to recover his damages, alleging negligence in that the halliard was known to be unfit for the purpose.

The evidence shows that the triangle was rigged up under the immediate direction and inspection of the mate; that the halliard was broken at a splice; that it had not been used for the same purpose before, and was unfit and insufficient to support the three men who were sent to work in the triangle in the way that it was rigged, namely, to sustain the triangle by a single line, or purchase, instead of having the line rove through the three sheaves of the block above, and the two sheaves of a block below, which would have divided the weight among five parts or purchases of the same line. The master, who at the time