

ing Sun Stove Polish" and "Rising Moon Stove Polish," (*Morse v. Worrell*, 9 Amer. Law Rev. 368;) "Apollinaris Water" and "London Apollinaris Water," in different kinds of bottles and different kinds of labels, (*Apollinaris Co. v. Norrish*, 33 Law T. [N. S.] 242.)

In *Amoskeag Manuf'g Co. v. Spear*, 2 Sandf. 608, it was said:

"An injunction ought to be granted whenever the design of a person who imitates a trade-mark, be his design apparent or proved, is to impose his own goods upon the public as those of the owner of the mark, and the imitation is such that the success of the design is a probable, or even possible, consequence."

A decree may be prepared finding that the complainants have a valid trade-mark as alleged in their bill, and that defendant has infringed the same, and for an accounting.

HUTCHINSON *et al.* v. COVERT.

(Circuit Court, N. D. Illinois. June 8, 1892.)

TRADE-MARKS—INFRINGEMENT.

A trade-mark consisting of the word "Star" and the symbol of a star, marked upon shirts and like articles, in connection with the words "Star Shirts," and other words describing the articles, by the use of which mark the goods have become well and favorably known as "Star Goods," is infringed by the use of the words "Lone Star" and the symbol of a single star on similar goods, whereby such goods may be sold as "Star Goods," and purchasers may be deceived into the belief that the goods are those made by the proprietors of the trade-mark.

In Equity. Bill by Gardiner S. Hutchinson, Henry B. Pierce, Ira Cole, and Thomas S. Morison against George H. Covert for infringement of trade-mark, praying an injunction and accounting. Decree for complainants.

B. F. Watson and *Cornelius V. Smith*, for complainants.

Hofheimer & Zeisler, for defendant.

BLODGETT, District Judge. This case involves the alleged infringement of complainants' star trade-mark, the origin and title to which are set out in the bill substantially as in the preceding case of *Same Complainants v. Blumberg*, 51 Fed. Rep. 829. The infringement charged against defendant consists in the use of the words "Lone Star," and symbol of a single star on shirts and underwear made or sold by defendant. I am of opinion that the prefix of the word "Lone" to the word and symbol "Star" in defendant's trade-mark is an infringement of the complainants' star trade-mark, as applied to shirts, underwear, etc. It is a mark and designation of defendant's goods which may give color to the assumed right to sell defendant's goods as "Star Shirts," "Star Underwear," "Star Goods," etc., and thereby deceive purchasers and users into the belief that they are buying the genuine complainants' goods. A decree for an injunction and accounting may be entered.

CITY OF NEW ORLEANS v. PAINE.

(Circuit Court of Appeals, Fifth Circuit. June 20, 1892.)

No. 32.

PUBLIC LANDS—SURVEYS—AUTHORITY OF LAND OFFICE.

A surveyor, acting under special instructions based upon an opinion of the secretary of the interior, surveyed an old Spanish grant, and reported the same to the surveyor general. Protests were filed against the survey; but the surveyor general approved the same, and forwarded it, together with the protests and evidence, to the commissioner of the general land office. The latter accepted the survey in part, but reserved the remainder for further consideration, meantime directing the surveyor general to withhold the filing of the triplicate plats from the local land office. The matter was then referred to the secretary of the interior, who held that the survey did not comply with the decision of his predecessor, and directed a new survey. *Held*, that the action of the surveyor general and the commissioner did not exhaust the authority of the land department, but that the matter was still lawfully pending therein, and the courts, therefore, had no authority to enjoin the obliteration of the old survey or the making of the new one. 49 Fed. Rep. 12, affirmed.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

In Equity. Bill by the city of New Orleans against Ruffin B. Paine, a deputy surveyor, to enjoin the obliteration of an old survey and the making of a new one directed by the secretary of the interior. An injunction was denied and a temporary restraining order dissolved. 49 Fed. Rep. 12. Complainant appeals. Affirmed.

J. L. Bradford, for appellant.

Wm. Grant, for appellee.

Before PARDEE and McCORMICK, Circuit Judges, and LOCKE, District Judge.

McCORMICK, Circuit Judge. The appellant is the owner of certain lands on the left bank of the Mississippi river, about 50 miles above New Orleans, embraced in a grant made by the French authorities on the 3d of April, 1769, to one Dupard. The land was described in the grant as having "30 arpens of front to the river, upon the whole depth which shall be found unto Lake Maurepas." The front of the grant was increased to 40 arpens, which is accounted for by the action of the river increasing the arc of the bend. The authorities of the land department have uniformly recognized the grant as a completed grant of former governments; and no substantial difficulty has been encountered in fixing its front on the river, and the direction of its side lines, following the rule that has obtained in the survey of riparian grants in Louisiana, that side lines shall be extended at right angles to the general course of the bank at the points from which they depart. The front of this grant being on the convex side of a bend of the river, the side lines rapidly diverge; the course of the upper or western line being N., 27° 48' W., and the course of the lower or eastern line being N., 17° 10' E. But much contention and difficulty, and diversity of views by various officials of the land depart-