

**2. SAME—PEN TIPS.**

Design patent No. 20,157, issued September 23, 1890, to Charles W. Boman for a pen tip, consisting of two cylinders of different sizes, with a beveled connection between them, and a bead around the smaller one near the bevel, and an abrupt flare at the end of it, is void for want of invention.

**3. SAME—PEN CASES.**

Design patent No. 20,158, issued to Charles W. Boman for a pen case, consisting substantially of the handle of his patent No. 20,156, made plain instead of milled, and the pen tip of his patent No. 20,157, brought together, is void for want of invention.

In Equity. Suit by the Eagle Pencil Company against the American Lead Pencil Company for infringement of certain design patents. Bill dismissed.

Samuel A. Duncan and Robert H. Duncan, for plaintiff.  
Edmund Wetmore, for defendant.

WHEELER, District Judge. This suit is brought upon three design patents granted to Charles W. Boman, assignor to the plaintiff, —No. 20,156, dated September 16, 1890, for a fountain pen case; No. 20,157, dated September 23, 1890, for a pen tip; and No. 20,158, dated September 23, 1890, for a pen case. The design of the first is of a milled handle and a plain cap, both rounded at the ends, with a bead around the handle at the end of the cap. That of the second is of two cylinders of different sizes, with a beveled connection between them, and a bead around the smaller one near the bevel, and an abrupt flare at the other end of it. That of the third is really the handle of the first, plain, and the tip of the second, brought together.

Pen cases of various materials consisting of a handle and a cap, caps and handles having rounded ends, milled handles, beads around handles to stop the caps, and around cylinders for ornament, pen tips of cylinders of different sizes, and pen tips with flares at the end, were all old. What Boman really accomplished as to the first patent was to bring a milled handle and a plain cap together in a fountain pen case. What he accomplished as to the second was to put an abrupt flare to the end of a pen tip of two cylinders of different sizes. And what he accomplished as to the third was to make the handle of his first plain, and bring to it the tip of his second. These changes produced things not exactly known before, and in that sense new, but they seem to have been due more to good taste than inventive skill, and really too slight to sustain either patent. *Atlantic Works v. Brady*, 107 U. S. 192, 2 Sup. Ct. Rep. 225.

Let a decree be entered dismissing the bill, with costs.

---



---

BROWER v. BOULTON et al.

(Circuit Court, S. D. New York. December 17, 1892.)

**1. TRADE-MARKS—VALIDITY—REGISTRATION.**

Plaintiff's predecessors in business, good will, and trade-marks used the words "La Venezolana" on five shipments of flour in 1873, three in 1885, one in 1886, several in 1887, 1888, 1889, and 1890. Plaintiff used them on similar shipments thereafter, and caused same to be registered as a trade-mark No-

ember, 1891. Defendant has used the same words much more continuously and extensively on similar shipments since October, 1884. *Held*, that whatever rights accrued to plaintiff's predecessor by the use of the words in 1873 were lost by abandonment long before defendant began using them in 1884.

2. SAME—RIGHTS BY REGISTRATION.

The trade-mark law (21 St. p. 502, c. 138, § 1) gives no rights by registration to any but owners of trade-marks.

*In Equity.* Suit by William H. Brower against William G. Boulton and others for alleged infringement of a certain trade-mark. Bill dismissed.

Antonio Knauth, for plaintiff.  
C. G. Kidder, for defendants.

WHEELER, District Judge. A predecessor of the plaintiff in business, good-will, and trade-marks appears to have used the words "La Venzolana" on five shipments of flour from New York to South America in 1873, on three in 1885, one in 1886, several in 1887, and several more, before his death, in 1888. Another predecessor appears to have used them on similar shipments in 1889, and, before his death, in 1890. The plaintiff used them on similar shipments after that, and caused them to be registered as his trade-mark November 17, 1891. The defendant firm has used these words much more continuously and extensively on flour in shipments ever since October 15, 1884.

This use of these words by the plaintiff's predecessor in 1873 does not seem to have been sufficient in extent and time to make them indicate with definiteness that flour on which they might be placed came from him; and whatever rights in that respect had begun to accrue to him by that use were lost by the abandonment of the use long before the defendants began using them, in 1884. After that, if either acquired any right to the exclusive use of those words for that purpose, the defendants appear to have done so. The statute gives no rights through registration to any but owners of trade-marks. 21 St. 502, c. 138, § 1. Let a decree be entered dismissing the bill, with costs.

---

PUTNAM NAIL CO. v. AUSABLE HORSENAIL CO.

(Circuit Court, S. D. New York. January 2, 1893.)

TRADE-NAMES—INFRINGEMENT—"HAMMER-POINTED" HORSENAILS.

Complainant alleged that by virtue of certain patents it had the exclusive right to manufacture "hot-forged and hammer-pointed" horsenails in imitation of the old hand process, and that defendant, with intent to cheat and defraud it, has advertised its nails as "hot forged and hammer pointed," when in truth they are neither, and that in this way defendant has palmed off its goods for those of complainant. It appeared that complainant's nails are made by a machine which subjects the nail to quick, percussive blows of two pairs of dies, operating alternately upon the entire length of the nail; and that defendant uses a revolving hammer which acts upon the metal by progressive blows, drawing it out from head to point, a bevel being formed near the point by a stroke of the hammer, and the surplus metal being then clipped off with shears; and that a similar process of forming the point was called "pointing by hammer" long before complainant's use of the expression in controversy. *Held* that,