

not, was always hot rolled, produced in a sheet mill, and never more than 12 feet in length; and because congress, in the prior tariff act of 1883, (22 Stat. 499,) uses the word "strips" in the steel clause without the qualifying word "sheet;" that to construe the term "sheet steel in strips" in the present act to include the import in controversy is to entirely ignore the well-known and recognized commercial meaning of "sheet steel;" that it is, in effect, to eliminate the word "sheet" from the statute, and to construe the sentence as if it read "steel in strips, of whatsoever width, twenty-five one-thousandths of an inch thick, or thinner." The addition of the word "sheet" before "steel" makes the meaning of the expression "sheet steel in strips" doubtful, and I do not think the connecting words in the paragraph, "whether drawn through dies or rolls, untempered or tempered, of whatsoever width, twenty-five one-thousandths of an inch thick or thinner," help the contention of either side in the present controversy, or assist the court as to the proper construction of this paragraph. When the question of a tariff law is one of doubt, that doubt must be resolved in favor of the importer. The intention of congress to impose a higher rate of duty should be expressed in clear and unambiguous language. *Twine Co. v. Worthington*, 141 U. S. 468, 474, 12 Sup. Ct. 55; *U. S. v. Isham*, 17 Wall. 496; *Hartranft v. Wiegmann*, 121 U. S. 609, 7 Sup. Ct. 1240; *Gurr v. Scudds*, 11 Exch. 190.

It seems to me that this case comes clearly within this rule. The decision of the board of general appraisers is reversed, and it is determined by this court that the several lots of steel covered by said decision should be classified under paragraph 146 of the tariff act of October 1, 1890, as steel in forms and shapes not specially provided for in said act, valued above four cents, and not above seven cents, per pound, and subject to a duty of two cents per pound, and not subject to an additional duty under paragraph 152 of said act.

SOCIAL REGISTER ASS'N v. HOWARD.

(Circuit Court, D. New Jersey. February 16, 1894.)

TRADE-MARK—INFRINGEMENT—SOCIAL REGISTER.

The words "Social Register," as applied to a list of persons resident in a certain locality, compiled by its publisher with reference to the personal and social standing of such persons, constitute a valid trade-mark, and their use by the publisher of a competing list will be restrained.

In Equity. On motion for injunction pendente lite. Bill by the Social Register Association against Frank Howard. Motion granted.

G. G. Frelinghuysen, for complainant.

John Albert McGown, for defendant.

GREEN, District Judge. The complainant has for a number of years published in the city of New York, under the distinctive name and title of "Social Register," a list of the names and resi-

dences of certain persons living in, and in the immediate vicinity of, New York City, including the town of Orange, N. J. These publications were at first monthly, but soon became, and are now published, quarterly. They are prepared with great care, not only as to the facts contained, but as well as regards the personal social standing of those whose names are "selected" for publication. The publication was evidently one of value to those who desired a list of this character, and speedily became pecuniarily remunerative to its projector. The Social Register was thoroughly well known, and to some extent might be regarded as authority upon the matter it concerned itself with. It coming to the knowledge of the complainant that the defendant, Frank Howard, had published a similar list of persons residing in Orange, N. J., which he called "Howard's Social Register," and which publication bore some resemblance to the complainant's publication, it caused notice to be served upon him, forbidding him to use the title "Social Register," which it claimed had become its property by virtue of its prior and distinctive use of those words, as a trade-mark. The defendant not heeding this notice, the complainant has filed its bill of complaint against him, for injunction and relief, and now moves for an injunction pendente lite, forbidding the defendant from using, as a title to his publication, the words "Social Register."

These words "Social Register" are clearly selected arbitrarily to designate the publication of the complainant, and cannot be properly called descriptive, in any sense. Hence, the words, when chosen, associated together, and applied to a list of persons selected at will by the compiler, as in the case at bar, become a trade-mark, and are entitled to protection as such. It is not necessary to cite authorities to sustain this statement. If this be so, undoubtedly the complainant is entitled to protection from any encroachment upon its acquired rights to the sole use of the terms so employed. Now, it can scarcely be doubted that to permit the defendant to use the same words to designate a similar publication, which is admittedly a rival, so far, at least, as the town of Orange may be concerned, would be to give to the defendant the advantage of the prestige which has already crowned the complainant's publication, and, while thus benefited, the defendant would, in equal degree, inflict damage, pecuniary in character, upon the complainant. This a court of equity should refuse to do. It should be its purpose and object, in matters of this sort, to prevent one from stealing away, unfairly, the business and good will which have been acquired by another. While fair competition promotes the public good, and is to be encouraged, unfair competition, based upon unlawful tactics, should be enjoined. The motion for injunction pendente lite is granted.

KERRY et al. v. TOUPIN.

(Circuit Court, D. Massachusetts. March 1, 1894.)

No. 3,179.

1. TRADE-MARKS—RIGHT TO—ALIENS.

Citizens of Canada, who are engaged in the manufacture of trade-marked articles, and who have a place of business in the state of New York, where they make and ship such articles for sale in the United States, are within the international convention of March 20, 1883, for the protection of industrial property; and they may sue in the United States courts for the infringement of their trade-marks by its citizens.

2. SAME—WHAT CONSTITUTES—INFRINGEMENT.

Complainants manufactured a medicinal compound under the name of "Syrup of Red Spruce Gum;" and for some 20 years or more that name was placed conspicuously on the package in which the compound was sold, and in connection therewith appeared a cut of an Indian against a background of spruce trees and a waterfall. *Held*, that the adoption and continuous use of this distinctive name and device entitle complainants to claim it as a trade-mark, and to be protected against its infringement by persons making similar goods.

In Equity. On final hearing. Bill by John Kerry and others against Hercule A. Toupin to restrain the infringement of complainants' trade-mark. Decree for complainants.

Edward S. Beach, for complainants.

John J. Hogan and William A. Hogan, for defendant.

ALDRICH, District Judge. This cause came on for hearing upon bill, answer, and proofs. In 1860 Henry R. Gray originated a medicinal preparation, to which he gave the fanciful name of "Syrup of Red Spruce Gum." The compound composed several ingredients, but the oleo-resin of the spruce was the leading medicinal feature. It is not necessary to consider the character of the preparation, further than to find that it was an original and artificial composition of several natural products, and a useful remedy in throat and lung troubles. The originator proceeded at once to manufacture and place such preparation before the public. It was put up in four-sided, oblong bottles, wrapped in blue wrappers, on which appeared, in conspicuous type, the trade-name, "Syrup of Red Spruce Gum," and in connection therewith the figure of an Indian, with a background of spruce trees and a waterfall. There was proper registration of such name and mark at Ottawa in 1872, and at Washington in 1874. Between 1860 and 1875, the originator used this name and mark continuously, and expended several thousand dollars in advertising and establishing the name and a trade. In 1875 he assigned all his rights to Kerry, Watson & Co., of Montreal, to which the complainants have succeeded. Since 1875 the complainants have used the name, mark, and wrapper continuously, and have expended, as the evidence shows, something like \$7,000 annually in advertising. They have a manufactory and place of business in Montreal, and for about 15 years have had a place of business at Rouse's Point, N. Y., where they manufacture and ship to various points in the United States. The complainants' annual