

the reported cases upon this portion of the law of trade-marks are collected.

The order of the circuit court is sustained, with costs of this court.

WALLACE, Circuit Judge. I place my concurrence in the judgment in this cause upon the broad ground that a body of associates who organize a corporation for manufacturing and selling a particular product are not lawfully entitled to employ as their corporate name in that business the name of one of their number when it appears that such name has been intentionally selected in order to compete with an established concern of the same name, engaged in similar business, and divert the latter's trade to themselves by confusing the identity of the products of both, and leading purchasers to buy those of one for those of the other. No person is permitted to use his own in such manner as to inflict an unnecessary injury upon another. The corporators chose the name unnecessarily, and, having done so for the purpose of unfair competition, cannot be permitted to use it to the injury of the complainant.

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ROGERS v. WM. ROGERS MANUF'G CO.

(Circuit Court of Appeals, Second Circuit. December 18, 1895.)

TRADE-NAME—INJUNCTION AGAINST USE.

The mere fact that one knows that cheap goods sold by him to the trade, stamped with his name, can and will be sold by dishonest dealers under representations that they are manufactured by a company of established reputation having a similar name, which manufactures a high class of goods, does not justify an injunction against the use of such stamp.

Appeal by the defendant from an order of the circuit court for the Eastern district of New York, which granted an injunction pendente lite against the defendant's causing to be manufactured or selling silver-plated ware stamped with the words "Wm. A. Rogers." The order was obtained upon the ground that by the use of this stamp upon the back of silver-plated ware the defendant was endeavoring to deceive the public into the belief that the goods were genuine Rogers goods, to the injury of the complainant. The history of the trade-name "Rogers," and the law upon the subject, have been briefly given in *R. W. Rogers Co. v. Wm. Rogers Manuf'g Co.* (which was decided at the present term) 70 Fed. 1017.

Wm. C. Beecher, for appellant.

Chas. E. Mitchell and Hiram R. Mills, for appellee.

Before WALLACE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. William A. Rogers has sold for a number of years, in the city of New York, small hardware and cheap spoons. In July, 1894, he engaged R. Wallace & Sons Manufacturing Company, a manufacturer of silver-plated ware, to make for him and prepare for market teaspoons, tablespoons, and forks plated upon steel. They were put up in boxes of the ordinary size and shape used for similar ware, which were labeled, "Wm. A. Rogers, N. Y.," and the stamp "Wm. A. Rogers" was upon the back of each

article. They were called "Brunswick," and were the cheapest known grade of silver-plated ware. The manufacturer made and sold the same grade of goods at a very cheap price under the name of "Victoria." The defendant sold the Brunswick at a low price, but higher than the manufacturer asked for his Victoria, and for one-fourth or one-fifth of the price which the complainant obtains for its genuine Rogers goods. In October, 1894, Rogers stopped the manufacture of Brunswick goods, because they were too poor, and obtained goods which he named "Belmont," which were also of a low grade, but of a better quality than the Brunswick, and were labeled and stamped in the same way. There are indications in the affidavits that he was trading upon his own name to deceive the public. For example, in one of his letters, which gave his prices, and solicited business, he says, "These prices way below any of the Rogers now on the market, and you will find them, at these prices, big sellers." In another letter of the same kind he says, "Prices way below any Rogers goods on the market." On the other hand, he said in another letter, "In regard to saying they are as good as the other Wm. Rogers, I cannot say that, as neither is the price." He undoubtedly knew that the stamp could and would be used by dishonest peddlers and dealers in cheap ware to deceive customers, but the affidavits do not afford sufficient basis for a finding that he started in the business and used the stamp for the purpose of making the public believe that his washed-steel Brunswick goods were genuine Rogers goods. There are some indicia of an unworthy purpose to gain an advantage from a name well known to the purchasers of silver-plated ware, but the affidavits do not contain sufficient facts to justify the conclusion that Rogers was using his name unfairly and dishonestly in the business in which he was entitled to use it.

The order of the circuit court is reversed, with costs.

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CLARK v. FIVE HUNDRED AND FIVE THOUSAND FEET OF LUMBER et al.

(Circuit Court of Appeals, Seventh Circuit. May 21, 1895.)

No. 136.

FEDERAL COURTS—ADMIRALTY JURISDICTION—LIEN FOR FREIGHT—GARNISHMENT IN STATE COURT.

A libel in rem against cargo to recover freight was filed before discharge and delivery, and consequently before the freight was due. Subsequently, in an action against libellant in a state court, garnishment process was issued and served upon the consignee. Thereafter he obtained possession of the cargo by giving bond for its value in the admiralty court, and then paid the freight into the state court. *Held*, that the seizure of the cargo under the libel gave the federal court prior and paramount jurisdiction, that the freight became payable therein on the delivery of the cargo, and that the subsequent payment into the state court was no defense. Baker, District Judge, dissenting. 12 C. C. A. 623, 65 Fed. 236, reaffirmed.

Appeal from the District Court of the United States for the Northern District of Illinois.

This was a libel by Frank Clark, owner of the steam barge Maggie Duncan, against 505,000 feet of lumber, constituting her