

are obtained from distillation. There is also a soft paraffine, popularly known as "vaseline." "Paraffine oil," which is known to commerce, is, as the witnesses for the government testify, a different article from the importation in this case. The collector classified the merchandise for duty under paragraph 76 of the tariff act of October, 1890, which reads:

"76. Products or preparations known as alkalies, alkaloids, distilled oils, essential oils, expressed oils, rendered oils, and all combinations of the foregoing and all chemical compounds and salts not specially provided for in this act twenty five per centum ad valorem."

The importers contend that it is free, under paragraph 671 of the free list, which reads simply: "671. Paraffine." If the article be in fact paraffine, it is covered by this last-quoted paragraph, which is manifestly more specific than the general enumeration of distilled oils in paragraph 76. The counsel for the government contends that the word "paraffine" in the free list refers only to the hard or waxy substance, but the evidence does not support such contention. There is no question of commercial designation, for the name of the article has no peculiar meaning, when used in trade, different from its popular meaning. The proof shows that paraffine is now found in three forms,—the fluid, the soft, and the hard. Even in Webster's Dictionary, cited by counsel for the government, paraffine is described as resembling spermaceti, and fusing at 120° to 136° F., and also as existing in the form of an oil. Originally, no doubt, it was produced only in the waxy form, but improvements in the methods of distillation have resulted in its production in either of the three forms described. The use by congress of the single word "paraffine," without any qualification, manifests an intention to cover at least all varieties of the article which were known when the act was passed, and, as liquid paraffine was at that time one of the known forms of paraffine, it comes within the provisions of paragraph 671.

The decision of the circuit court is reversed.

---

KAISERBRAUEREI, BECK & CO. v. J. & P. BALTZ BREWING CO.

(Circuit Court, E. D. Pennsylvania. December 18, 1895.)

No. 62, April Term, 1892.

**TRADE-MARKS—"KAISER" BEER.**

The word "Kaiser," as applied to beer, which has become known in the United States, under that name, as the product of a particular German brewer, is a valid trade-mark in the United States, though, under the law of Germany, it could not be adopted as such.

This was a suit by Kaiserbrauerei, Beck & Co. against the J. & P. Baltz Brewing Company to restrain the infringement of plaintiff's trade-mark. The cause was heard on the pleadings and proofs.

Goepel & Raeger, for complainant.

Biddle & Ward, for defendant.

DALLAS, Circuit Judge. The complainant, a German corporation, engaged in brewing at Bremen, introduced into the United States, in November, 1874, beer, which, for the purpose of distinguishing it from beer brewed by others, it labeled "Kaiser"; and it has since continuously sold its beer, so labeled, in this country. It claims to have thus acquired the exclusive right so to use that word, and this claim appears to have been generally acquiesced in until, at a comparatively recent date, the defendant commenced the use of the same word upon domestic beer of its manufacture. The defendant admits this use by it, but denies that it is unlawful. I have not been convinced that the word "Kaiser" is within any of the many judicial decisions by which it has been settled that the right of selection of a trade-name is so restricted as to the words from which selection may be made as not to admit of the adoption of ordinary designations of quality, etc. It is unquestionably true that "no one can claim protection for the exclusive use of a trade-mark or trade-name which would practically give him a monopoly in the sale of any goods other than those produced or made by himself" (Canal Co. v. Clark, 13 Wall. 311); but the evidence shows that the word "Kaiser," when applied to beer, is, in this country, understood as a badge of origin, pointing to the complainant as the producer of the commodity, and therefore its protection, by decree of this court, in the exclusive use of that word, cannot have the effect of giving it a monopoly in the sale of any goods not produced by itself. The occasional designation of beer, in Germany and in Austria, as "Kaiser Beer," is not, in my opinion, of any importance. When there applied to any article, the word "Kaiser" signifies nothing, and has no trade object, unless it be to attract purchasers by appealing to the sentiment of loyalty or patriotism. Here, however, there never has been any such indefinite use of the word, and, as applied to beer, it is wholly unserviceable, except as it indicates the ownership of the complainant. Practically considered, it is to be regarded as a word chosen from a foreign language, having, with reference to the article to which it is related, no meaning whatever other than that which has become attached to it by reason of its adoption, use, and recognition as a trade-name. Under the treaty between the United States and Germany to which defendant's counsel have referred, the citizens of either country are entitled in the other to "the same protection as native citizens." Therefore, to hold that, because the word in question, under the municipal law of Germany, may be freely used, a German subject may not be protected in its exclusive use here, would involve the denial of like protection to our own citizens as well, and upon the same ground; and, consequently, the concession that the German law is operative within the United States,—a concession which, certainly, this treaty does not require us to make. So long as the subjects or citizens of each country are treated alike, both Germany and the United States have been left at liberty to grant or to withhold protection as they may respectively deem proper. These observations are pertinent also to the Austrian treaty to which defendant's counsel have di-

rected attention. Its provision that, "if the trade-mark has become public property in the country of its origin, it shall be equally free to all in the countries or territories of the other of the contracting parties," is without applicability. The "trade-mark" of the complainant originated, not in Austria, but in the United States, and it has not become public property. It appears that in Austria that mark could not have been validly adopted; that is to say, the law of Austria is, in this respect, identical with that of Germany; but I repeat, this trade-mark is good under our law, and therefore, though the Austrian courts are not, for that reason, bound to uphold it, those of the United States, on the other hand, are under no obligation, because it would not be good under Austrian law, to condemn it.

A decree for the complainant in the usual form may be prepared and submitted.

---

CONSOLIDATED CAR-HEATING CO. v. MARTIN ANTI-FIRE CAR-HEATER CO.

(Circuit Court, N. D. New York. January 20, 1896.)

1. PATENTS—INFRINGEMENT.

One who takes the principal and substance of a patented invention cannot avoid liability for infringement by reason of unimportant and unsubstantial variations.

2. SAME—STEAM HOSE COUPLINGS.

The Sewall patent, No. 363,553, for an improvement in hose couplings, adapted for use in the steam-heating apparatus used on American railways, and in which one of the main features is the locking and holding in engagement of the two parts of the coupler by gravity devices, shows invention of at least average merit, and was not anticipated; and its claims are infringed by a coupler made in accordance with the Martin patent, of September 11, 1894.

This was a bill in equity by the Consolidated Car-Heating Company against the Martin Anti-Fire Car-Heating Company for alleged infringement of a patent for steam hose couplings.

This is an equity suit for infringement based upon letters patent, No. 363,553, granted May 24, 1887, to James H. Sewall for an improvement in hose couplings adapted for use in steam-heating apparatus used on American railways. The patent is now owned by the complainant. The inventor says in the specification:

"This invention has for its object to construct a two-part hose coupling, each half of which is alike, which may be used to couple together hose for the passage of steam, air, water, gas, etc. The coupling herein to be described hangs by gravity and is provided with locking devices which keep the two halves locked together in all positions except when turned upward at the center. Each half is composed, preferably, of a single piece of metal having an upwardly-pointing neck or end, which is attached to the pipe or hose to be coupled, the body portion and neck having a passage through it to permit free and unobstructed passage for steam, air, water, or any other fluid. The body portion of each half of the coupling has at one side opposite to each other a broad flat extension having an inturned lip or flange at one edge, and the opposite side of each half is cut away to present a groove or passage, with which the inturned flange of the broad extension co-operates. At the lower end of the meeting face of each half of the coupler a rib is provided, extending half the width of said meeting face, and for the remaining distance the face is cut away to present a recess, which receives the rib