

PER CURIAM. According to the evidence in the record, all gloves, when commercially finished, have embroidery upon the back, consisting of three decorations, and those in which the decoration is formed of a single strand or cord are commercially known as "plain" gloves. We conclude that the embroidered gloves "with more than three single strands or cords" of paragraph 458 of the tariff act of October 1, 1890, are all those except the three single-strand embroidered gloves, and that, as the gloves in controversy have three decorations, each of which consists of more than a single strand or cord, they were properly subjected to the additional duty of 50 cents per dozen pairs. The judgment of the circuit court is therefore affirmed.

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HOSTETTER CO. v. BECKER. SAME v. BAUER. SAME v. BOWER.

(Circuit Court, S. D. New York. April 8, 1896.)

UNFAIR COMPETITION—CONTRIBUTING TO FRAUD.

Complainant had sold for many years an article known as "Hostetter's Bitters." Defendant manufactured an article resembling it in color and in other particulars, and sold the same to retail dealers, under the name "Host-Style Bitters," in large demijohns, without labels, and was shown in several instances to have given to the purchaser of his bitters an empty bottle bearing all complainant's labels. *Held*, that defendant, though the purchaser from him was not deceived, had furnished the means of deceiving the public, and should be enjoined from selling Host-Style Bitters, and, at the same time and in connection with the sale, giving to the purchaser empty Hostetter bottles.

Albert H. Clarke and James Watson, for complainant.  
Charles Putzel, for defendants Becker and Bower.

COXE, District Judge (orally). In the cause argued yesterday, Hostetter Company against Emil Becker, I am inclined to think that, upon the conceded facts, the complainant is entitled to relief. Many propositions have been advanced upon one side and disputed upon the other which, in my view of the case, it is not necessary now to determine. The following facts are either conceded or are established by a great preponderance of testimony: The defendant makes an article of bitters which is light in color, and in other particulars resembles the bitters which have been sold by the complainant for a great number of years. These bitters made by the defendant are called "Host-Style Bitters," the name not being derivative, but purely arbitrary. The proof shows no possible reason for the adoption of this name unless it be that in sound and general appearance it resembles the complainant's name. No one of the witnesses called for the defendant gives any plausible explanation for adopting this name. In view of the other evidence I cannot doubt that it was adopted with an intent upon the part of the defendant to deceive the public and confound his bitters with those made by the complainant.

The defendant's bitters are sold in large demijohns, with no label or mark at all resembling complainant's labels. But it is admitted

that in four instances these bitters were sold and at the same time an empty bottle containing all the labels of the Hostetter bottles was given away to the purchaser. Admitting that nothing was said upon the occasion when these bottles were given away with the demijohn, I think the inference is almost conclusive that it was the intention of the defendant and his agents that the contents of the demijohn was to be poured into the bottle and sold in that way. No other presumption can arise from that conjunction of facts. Therefore, to draw an analogy from the patent law, it is a case of contributory infringement. Of course the buyers of defendant's bitters were not deceived. It is not pretended that they were, and that is not the theory of the bill as I understand it. But the defendant placed in the hands of the buyers implements which enabled them to deceive the general public. It cannot be successfully disputed that it would be a fraud upon the complainant's rights if a retail dealer should fill an old Hostetter bottle with spurious bitters and sell it to retail purchasers as the genuine Hostetter bitters; and yet this is, in the eye of the law, precisely what the defendant does. While not doing that himself he enables others to do it, and he suggests to them the way in which it can be done successfully.

Upon the conceded facts the case is brought directly within the decision in the Western circuit which was read yesterday, and where the law is laid down precisely as I understand it to be. *Hostetter Co. v. Brueggeman-Reinert Distilling Co.*, 46 Fed. 188.

Mr. Putzel: If your honor please, there is a more recent case.

The Court: It does not change the law because that is the law which has been enunciated ever since the doctrine of unfair competition in trade has found a place in the law books.

The complainant is entitled to a decree enjoining the defendant and his agents from selling Host-Style Bitters, and at the same time and in connection with the sale giving to the purchaser empty Hostetter bottles. The court should not go to the extent of saying that the defendant should not sell his bitters by whatever name he sees fit in demijohns without labels, but as I said yesterday it would seem that he is treading upon dangerous ground in adopting a name which so closely resembles the complainant's name. I do not go to that extent, because I think the court would not be justified in saying that the defendant should not use "Host-Style" as the name for his bitters provided he does not simulate any of the labels of the complainant, but I do think he should be stopped from selling these bitters and giving to the purchaser empty Hostetter bottles in such circumstances that the purchaser could hardly doubt that it was the intention that he should sell the bogus bitters in the genuine bottle.

In the case of the Hostetter Company against Bauer, the defendant was a retail dealer who sold spurious bitters in a Hostetter bottle. That is undisputed. As to him there should be a decree as prayed for in the bill.

As to the case of the Hostetter Company against Bower, I will take the record and examine the testimony, because in that case there is a somewhat difficult question of fact.

Decrees to be prepared by complainant's counsel, copies of which are to be handed to the counsel for the defendant; the same to be settled Friday morning, April 10th.

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WELKER v. WELLER et al.

(Circuit Court, W. D. Pennsylvania. February 13, 1896.)

1. PATENTS—INFRINGEMENT—FASTENINGS FOR TABLE LEGS.

The Welker patent, No. 480,536, for a fastening for table legs of knock-down tables, cannot, in view of the prior state of the art, be expanded to cover constructions which do not embody the elements of "longitudinal, segmental kerfs," and "tenons secured in the grooves or kerfs," and in which the joint used is of a different and well-known construction.

2. SAME—DESIGN FOR TABLE LEGS.

The Welker design patent, No. 22,997, for a design for table legs, is void for want of novelty.

This was a suit in equity for the infringement of certain patents relating to table legs for knockdown tables.

John G. Reading and Frank L. Dyer, for complainant.

S. P. McCandless, H. C. Parsons, and C. D. & W. R. Davis, for respondents.

BUFFINGTON, District Judge. This suit is brought by Louis Welker against H. M. Weller and William Decker for alleged infringement of letters patent No. 480,536, granted August 9, 1892, for a fastening for table legs, and also for the infringement of letters patent for a design for a table leg, No. 22,997, granted January 2, 1894, to said Welker. As touching the first patent, infringement of the third claim is alleged, which is as follows:

(3) In a knockdown table, the combination of the frame, having its side pieces provided with the longitudinal, segmental kerfs or grooves, arranged as described, the corner piece or brace having its chamfered ends provided with the tenons secured in the grooves or kerfs, the solid head leg fitted against the imperforate ends of the side pieces, and the screw bolt secured in the head of the leg, and having a nut bearing against the corner piece or brace, substantially as described.

The defenses alleged are noninfringement, prior use, and lack of patentability. The subject of dispute is what is known in the furniture trade as a "knockdown table." For convenience of shipping and handling, tables are constructed with adjustable legs placed therein, and the whole crated and shipped. The legs are not attached until they reach the dealer. In this way freight is saved, and damage to the tables avoided, while the adjustable legs make it possible to use such tables in flats and houses with narrow halls, into which the same table, with nonadjustable legs, could not be carried. Decided advance in the art had been made before Welker's patent. It is not necessary to refer to all of it in detail. The examples selected are sufficient to show the comparatively narrow field for advance left when Welker entered the field. Prior thereto, we find in knockdown tables a corner brace connecting the side rails,

and connection of these parts made with an adjustable leg by a wood screw, which passed through a hole in the corner brace, and was screwed into the leg or by a lag screw which had a nut head, instead of the flat screw head of the wood screw. The objection to this method was that when the table was taken apart the screw had to be taken completely out of the leg, and when this was done a few times the hole became enlarged, and the tables ceased to be rigid and firm. This objection was in part obviated by the St. John construction, in which an opening of keyhole shape was made in the cross brace of sufficient size at the lower end to permit the nut of the lag screw to slip through. When this was done the leg was pushed upward to its proper place, and a rigid connection made by turning the nut. By this method the screw was only given a few turns, and it was not necessary to remove it entirely from the table leg. The next advance showed a method in which there was no abrasion of the leg whatever. In it the interior corner of the leg was slotted so as to permit an iron hook to slip down and engage with an iron cross-piece in the slot. The outer end of the hook was threaded, passed through a hole in the corner brace, and by means of a nut with washer the parts were drawn into rigid connection, the ends of the rails seating themselves in bevels on the sides of the legs. This method was embodied in Goedeke's patent, No. 456,377, of July 21, 1891. Subsequent to this, complainant conceived the idea of permanently placing a rigidly connecting hanger bolt in the leg itself, and also of attaching the corner brace to the side rails by a peculiar form of joint. A hanger bolt has a wood screw thread at one end, and a nut thread at the other. It will be noted that the idea of threading the exterior end of the connecting bolt, and forming a rigid connection by a nut, was not original with complainant, and his advance in this respect was simply in making the connecting pin primarily rigid, as opposed to Goedeke's attaching a hooked bolt to a cross pin in the leg slot. The third claim originally made was:

In a table, the combination with side pieces, a corner block, and a leg, of a screw bolt rigid with the leg, and passing through the corner piece, and a nut fitted on the screw bolt, substantially as described.

This claim, which was clearly broad enough to cover defendants' device, was rejected on the Goedeke patent, and because the lag screw was common in furniture; and in the subsequent proceedings the applicant, in effect, disclaimed originality in the lag screw itself, saying:

Applicant regards it as important to use a bolt having a lag screw at one end to rigidly fasten the bolt in a solid leg, and with a metal-nut thread on its other end. The bolt is not claimed, per se, but the organization of the several parts is new.

In all the claims finally granted, there was a limitation of longitudinal, segmental kerfs, and tenons secured in the kerfs or grooves. In view of these proceedings in the patent office, and of the prior advance in the art, it is manifest the claim should not be expanded to cover constructions which do not embody the elements of "longitudinal, segmental kerfs," and "tenons secured in the grooves or kerfs," and in which the joint employed was another and well-known

prior form of construction. Indeed, such a construction would be fatal to the patent. The claim being thus construed, it is clear the respondents' device does not infringe.

The question still remains, can the bill be sustained upon the design patent for a table leg? On November 29, 1893, the complainant applied for a design patent for a table leg, which was granted January 2, 1894. "The leading feature in my design," the specification recites, "consists of a table leg with an upper end of a generally square shape, with one of its corners beveled off, and with a projection protruding from the beveled corner." He had on December 2, 1891, applied for a mechanical patent for a fastening for table legs, which, in substance, showed in combination the form of leg embodied in the design patent. The complainant testifies that he made his invention in the latter part of the summer of 1891, and began manufacturing the tables in the fall, or the latter part of the summer, of 1891. Conceding for present purposes that a table leg which had been embodied in combination in a mechanical patent issued before the present application was made, which is not in itself an article of commerce, and which, when used in a table, so far as the "projection protruding from the beveled corner" is concerned, is wholly hidden from view, and in no way appeals to the eye; conceding, we say, that it can be the subject of a design patent, and conceding that a design patent could issue on an application made November 29, 1893, for a design which, by the applicant's admission, had been perfected more than two years previously, and had been publicly used and manufactured in the fall or latter part of the summer of 1891,—the question still remains whether there was any novelty in the design shown. On this point the issue is with the respondents. Exhibit G, introduced by complainant, and admitted by him to have been manufactured by respondents before the device in suit, shows a table leg with an upper end of a generally square shape, with one of its corners beveled, and a projection protruding from such beveled corner. The only difference between it and the design-patent device is that Exhibit G has a fixed nut on the end of the projection. Such being the case, there certainly was no patentable novelty in dispensing with the nut. Where the two designs are, in their prominent features, identical, as they are here, and their sole difference lies in that the protuberance of one has a small nut at the end, and the other has none, the difference is not of such material character as to afford ground for the grant of a design patent. We are therefore of opinion the design patent is void for want of patentable novelty. Let a decree dismissing the bill be drawn.

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TROY LAUNDRY MACHINERY CO. v. ADAMS LAUNDRY MACHINERY CO. et al.

(Circuit Court of Appeals, Second Circuit. March 17, 1896.)

PATENTS—INFRINGEMENT—LAUNDRY DAMPENING MACHINES.

The Wendell and Wiles patent, No. 401,770, for an improvement in dampening machines, is so limited by the action of the patent office and