

UNITED STATES v. STEARNS et al.

(Circuit Court of Appeals, Second Circuit. February 1, 1897.)

CUSTOMS DUTIES—FREE LIST—QUILLS.

Quills, black and white, from turkeys' wings and tails, only changed from their original condition by cleaning, and by dyeing the black ones, were free of duty, as "quills, prepared or unprepared, but not made up into complete articles," under paragraph 689 of the act of 1890, and were not dutiable as "ornamental feathers," under paragraph 443.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was an appeal by the United States from a decision of the board of general appraisers, reversing the action of the collector of customs in respect to the classification for duty of certain merchandise imported by Stearns & Spingarn. The circuit court affirmed the decision of the board (75 Fed. 833), and the United States appealed.

Henry D. Sedgwick, for the United States.
Albert Comstock, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. The articles in question were quills from turkeys' wings and tails, some white and some black. They were no further advanced, and were in their original condition, except that they had been cleaned, and the black ones dyed. They were assessed for duty as "ornamental feathers," under paragraph 443, Act 1890. That paragraph provides, inter alia, for "colored and ornamental feathers not specifically provided for in this act." Paragraph 689 of the free list provides for "quills, prepared or unprepared, but not made up into complete articles," and does not contain the n. o. p. f. clause. The evidence did not establish the fact that there was any commercial designation which would take the articles out of their ordinary designation as "quills"; and we agree with the circuit court in holding that these quills are specially provided for by said paragraph of the free list, and are, therefore, not dutiable as feathers not otherwise specially provided for.

UNITED STATES v. BORGFELDT et al.

(Circuit Court of Appeals, Second Circuit. February 1, 1897.)

CUSTOMS DUTIES—CLASSIFICATION—TOOTHPICKS.

Toothpicks were not dutiable as "quills, prepared or unprepared," under paragraph 768 of the act of March 3, 1883, but as nonenumerated articles, manufactured in part, under Rev. St. § 2516.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was an appeal from a decision of the board of general appraisers in respect to the classification of certain merchandise im-

ported by Borgfeldt & Co. The circuit court reversed the decision of the board, and the United States appealed.

Henry D. Sedgwick, for the United States.
Albert Comstock, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. We agree with the board of general appraisers that the importations in controversy—toothpicks—were not dutiable as “quills, prepared or unprepared,” under paragraph 768 of the tariff act of March 3, 1883, and that such provision is intended to apply to quills in their natural condition, or prepared by cleaning, bleaching, scouring, etc., and not to those which have been advanced and transformed into a new article of commerce, having a distinct name, and adapted for a new use; and that they were properly classified as unenumerated articles, manufactured in part, under section 2516, Rev. St. The decision of the circuit court is therefore reversed, and that of the board of appraisers affirmed.

JOHNSON et al. v. BAUER et al.

(Circuit Court, N. D. Illinois. November 16, 1896.)

TRADE-MARKS—INFRINGEMENT.

A trade-mark consisting of a red Greek cross is not infringed by a mark for similar goods, consisting of a Maltese cross having a red center and dark projections, the latter being placed upon packages which, by their peculiar lettering and ornamentation, are given a more distinct individuality than the packages to which the first mark is affixed.

Rowland Cox and Banning & Banning, for complainants.
Moran, Kraus & Mayer and Walter H. Chamberlain, for defendants.

GROSSCUP, District Judge (orally). The bill in this case is filed to restrain the infringement of a trade-mark. The complainants are the manufacturers and sellers of large quantities of medicinal plasters. They sell these plasters in boxes of a somewhat peculiar pattern, the colors of the boxes varying according to traditional notions of druggists respecting the character of plasters; and upon each of these boxes, both at the ends and on the sides, is stamped a red Greek cross. The defendants are the manufacturers and sellers also of medicinal plasters, and have adopted, among the other insignia of their trade-mark, a cross of the pattern of the Maltese cross, having a red center and dark projections. The sole question is whether the defendants' designs for a trade-mark are clearly and purposely within the boundaries that the complainants are entitled to reserve as exclusive to themselves. All these cases depend not so much upon general rules of law as upon the individual application of the law to the case in hand. I was impressed with the fact at the hearing, upon an exhibition of these trade-marks, both of the complainants and of the defendants, that the defendants' had a very much more striking individuality than the complainants'. I could not pick out,—and