

recovery of forfeitures of value upon the importations specified in the criminal proceedings. The complaint and hearings in the criminal proceedings and the conferences with the United States attorney referred to, must have disclosed this fact fully. The general appearance put in in actions Nos. 2, 3 and 4 were served respectively from six weeks to upwards of four months after the complaint in action No. 1 had been served and a full understanding of all the actions must have been had. The service of a general appearance under such circumstances must be regarded as a waiver of any objection to the want of indorsement upon the summons. The required indorsement could not in fact have given to the defendant or his attorneys any information which they did not already practically possess. Through the extraordinary delay and the extensions of time given for the service of the complaints, if the summonses and notices of appearance were now set aside, the government's right of action would be barred by the statute of limitations. This of itself would not be a sufficient reason for denying to the defendant any substantial right; but it is not credible that any such extensions for nearly three years would have been granted or such delays incurred, if the nature of the actions had not been fully understood. If that was understood, as I can have no doubt it was, when the general appearances were served, such appearances were a waiver of the defects. A motion to set aside the service after appearance, or for leave to withdraw a notice of appearance, ought to be made with reasonable promptness after information received; and if not so made, such motions should be denied. And where a long time has elapsed since the general appearance was served and the statute of limitations has become a bar to any new action, leave should not be given to withdraw such an appearance, nor the summons be set aside, except upon clear proof that the defendant was really and in good faith ignorant of the nature of the action, or had wholly misconceived it. This cannot be the fact here, and the motions must, therefore, be denied.

LEVER BROS., Limited, v. PASFIELD.

(Circuit Court, E. D. New York. July 8, 1898.)

1. TRADE-MARK—WORDS SUBJECT TO APPROPRIATION.

"Sunlight" is a good trade-mark for a soap, and is infringed by the use of the name "American Sunlight."

2. SAME—EVIDENCE OF INFRINGEMENT.

Proof of a single sale, though made to complainant's detective, may, in connection with other proofs, be sufficient to justify an injunction.

This was a suit in equity by Lever Bros., Limited, against George B. Pasfield, for alleged infringement of the trade-mark "Sunlight," used in connection with a soap. Final hearing on pleadings and proofs.

Rowland Cox, for complainant.

Louis B. Adams, for defendant.

LACOMBE, Circuit Judge. Whether the English predecessors of complainant, or the Milwaukee firm, were the first to use the word "Sunlight" in connection with soap, is immaterial, since complainant is the owner of all the rights of both concerns in that particular use of the name. It is undoubtedly a good trade-mark, and the use of the name "American Sunlight" in connection with soap is plainly an infringement. Indeed, the only point which is urged with any force by defendant's counsel is the fact that only one actual sale is shown, and that to an emissary of the complainant, who persuaded defendant to put up and sell the goods, and bill them under the infringing designation. It is not the law, however, that relief in equity will be denied when the only actual sale proven is one to complainant's detective. It may be, as suggested in *Byam v. Bullard*, 1 Curt. 100, Fed. Cas. No. 2,262, that such a sale is not per se an infringement; but as pointed out in *De Florez v. Reynolds*, 14 Blatchf. 505, Fed. Cas. No. 3,742, it may, in connection with other proof, be persuasive evidence of other sales, and convincing proof of an intention to sell whenever the opportunity of doing so without detection is presented. The testimony of the defendant himself, especially in regard to the letter produced by complainant; his careful qualification of his answers with the phrase, "I do not remember;" the circumstances attending the sale, and his own admissions as to what he said and did; his careful preservation of the infringing labels and die,—satisfy me that, unless restrained by injunction, he will continue to sell his soap under the infringing trade-mark whenever what he may think a safe chance to do so presents itself. Against this threatened injury complainant should be protected by an injunction, but there is not proof sufficient to warrant a decree for an accounting.

CAMP v. BRANHAM et al.

(Circuit Court, N. D. Ohio, W. D. June 8, 1898.)

No. 1,305.

1. PATENTS—INVENTION—APPARATUS FOR LAYING UNDERGROUND CONDUITS.

The production of a mandrel having at one end a handle for pushing it back and forth, and at the other a rubber rim which serves to break off and push or sweep ahead of it all the particles of cement that stick to the interior of a hollow tiling conduit for electric wires, held to involve patentable invention.

2. SAME.

The Camp patent, No. 467,650, for an apparatus for laying underground conduits for electric wires, held valid and infringed.

This was a suit in equity by H. B. Camp against Branham & Gest for alleged infringement of a patent.

Albert M. Austin, for complainant.

E. C. Reemelin, for defendants.

RICKS, District Judge. This is a bill depending on the validity of letters patent No. 467,650, dated January 26, 1892; being an apparatus for laying underground conduits for electric wires. The