

are selling seems to have had no better luck, for, with the word "Uneeda" before him, his device to avoid confusion was the adoption of the word "Iwanta." The incessant use of the personal pronouns in daily speech has associated in every one's mind the sounds represented by the letters "I" and "U"; the two words are of precisely the same length; both end with the same letter, "A"; and both express the same idea, namely, that the prospective purchaser's personal comfort would be promoted by the acquisition of a biscuit. There are, as also is usual, a number of minor differences between the forms and the dress of the two packages, which are expatiated upon in the affidavits and the brief; but no one can look at both packages without perceiving that there are strong resemblances, which could easily have been avoided had there been an honest effort to give defendants' goods a distinctive dress. Both name and dress are clearly calculated to mislead, and the statements that both were adopted with an eye single to differentiation strain the credulity of the court beyond the breaking point. Complainant may take a preliminary injunction against the use of the trade-name "Iwanta," and of the present style of package; also against similar colorable imitations of complainant's trade-name, "Uneeda," and of his style of package.

BLAKEY et al. v. NATIONAL MFG. CO. et al.

(Circuit Court of Appeals, Third Circuit. June 1, 1899.)

No. 15.

1. PATENTS—PRELIMINARY INJUNCTION.

A preliminary injunction should be refused when infringement is not clearly established.

2. SAME—DEVICE FOR PROTECTING SCREW THREADS OF PIPES.

A preliminary injunction upon claim 1 of patent No. 440,168, for a device for protecting the screw-threaded ends of pipes, denied, because infringement was not clearly shown.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

W. L. Pierce, for appellants.

Thomas W. Bakewell and E. A. Lawrence, for appellees.

Before **ACHESON** and **DALLAS**, Circuit Judges, and **BRADFORD**, District Judge.

DALLAS, Circuit Judge. This is an appeal from a decree of the circuit court of the United States for the Western district of Pennsylvania, refusing a preliminary injunction to restrain the alleged infringement by the appellees of the first claim of letters patent of the United States No. 440,168, dated November 11, 1890, which claim is as follows: "(1) The device for protecting the screw-threaded ends of pipes, consisting of a band provided with flanges on each end of the band, and adapted to engage the screw threads of the pipe, substantially as set forth." The only question which we have felt ourselves called upon to consider is that of infringement, and we do

not, in the present situation of the case, deem it desirable to enter upon a discussion of it. It is sufficient for the present purpose to say, as has often been said before, that a preliminary injunction should never be awarded where the right is doubtful, or the wrong uncertain, and that the infringement here charged has not been clearly established. *American Nicholson Pavement Co. v. City of Elizabeth*, 4 Fish. Pat. Cas. 189, Fed. Cas. No. 312. *Consolidated Electric Storage Co. v. Accumulator Co.*, 5 C.C.A. 202, 55 Fed. 485; *Van Camp Packing Co. v. Cruikshanks Bros. Co.*, 33 C.C.A. 280, 90 Fed. 814; *Williams v. McNeely*, 56 Fed. 265. The question of infringement, as it was presented in the prior adjudications which have been brought to the attention of the court, is not identical with that which arises upon this record. It is, of course, possible that upon final hearing the complainants may appear to be entitled to the relief which they seek; but that, upon the proofs as now submitted, the court below erred in refusing a preliminary injunction, the only legitimate purpose of which is to preserve the existing state of things until the rights of the parties can be thoroughly investigated, we cannot adjudge. The decree is affirmed.

UNITED STATES REPAIR & GUARANTY CO. et al. v. STANDARD PAVING CO.

(Circuit Court of Appeals, Second Circuit. May 25, 1899.)

No. 143.

1. PATENTS—ANTICIPATION—METHOD OF REPAIRING ASPHALT PAVEMENTS.

The Perkins patent, No. 501,537, for an improved method of repairing asphalt pavements, was not anticipated by the French patent No. 137,208, granted to Crochet in 1880. The rock asphalt used in French pavements, and to which the Crochet process is applied, differs materially from the Trinidad asphalt, of which American pavements are made, and is affected differently by the heat applied in repairing. In repairing the former by the Crochet method, the damaged part of the pavement is removed, while by the Perkins method, as applied to the Trinidad asphalt, the damaged part is melted, and, uniting with new material added, is reused. Hence, if the methods are regarded as the same, the Perkins patent is valid, as an application of such method to different and dissimilar materials.

2. SAME—INFRINGEMENT.

The Perkins patent, No. 501,537, for an improved method of repairing asphalt pavements, an essential feature of which is the perfect commingling of old and new material in the process of repairing, is not infringed by a process by which no such commingling is attempted, but the damaged material is removed, the depression scraped out, and new material added, with cement to cause it to adhere.

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

Letters patent No. 501,537, dated July 18, 1893, were issued to Amos H. Perkins, assignor to the Western Paving & Supply Company, for an improved method of repairing asphalt pavements. The patent was subsequently assigned to the United States Repair & Guaranty Company, which gave an exclusive license to the co-complainant, the Barber Asphalt Paving Company. A bill in equity brought in the circuit court for the Northern district of New York (87 Fed. 339), which charged the defendant with an infringement of