USE.

See ACQUISITION; PRIOR USE; EXCLUSIVE RIGHT.

VEHICLES.

See §§ 87, 88, 326, 594.

VENDOR.

§ 1000. A commision merchant who sells an article under a simulated trademark, knowing its character, is liable to a suit to restrain its further sale, by the proprietor of the trademark, and will be subjected to the costs of such suit. 1845, *Vice Ch. Sandford*, Coats *v.* Holbrook, 2 *Sandf. Ch.* 586 (*N. Y.*).

§ 1001. The venders of an article of merchandise are entitled to the exclusive use of a trademark adopted by them to distinguish such article, although they do not manufacture the goods to which it is applied. 1846, *N. Y. Court of Errors*, Taylor *v.* Carpenter, 11 *Paige*, 292; S. C., 2 *Sandf. Ch.* 603.

§ 1002. Goods were sold by an auctioneer, without any warrant or misrepresentation, and the same turned out to be spurious, and the labels upon them forged and counterfeited. *Held*, that such facts constituted no defense to an action upon a note given for the purchase price; there being no proof that the auctioneer knew the fact of the spurious nature

of the goods, or that he had any better means of judging of their genuineness than the buyers. 1849, *N. Y. Superior Ct. G. T.*, Rudderow *v.* Huntington, 3 *Sandf.* 252.

§ 1003. If one manufactures goods himself, and puts upon them the trademark of another, though he may not know to whom that mark belongs, he must at least know that he has himself no right to the mark. That knowledge makes him liable to account for the profits he may have realized by his conduct. But if one buys goods from a third party, believing them to be genuine, while in fact they are spurious, it is not until he has been told that they are so that he can be considered to be guilty of any fraud, or to be liable to render any account. 1864, *Master of the Rolls*, Moet *v.* Couston, 10 *Law Times R.* (*N. S.*) 395; S. C., 33 *Beav.* 578.

§ 1004. The defendants, who had innocently bought and sold as genuine an article which was in fact spurious, were restrained from selling it with the plaintiff's trademark, but were not ordered to account for the profits they had made. *Ibid.*

§ 1005. The plaintiff being a thread manufacturer of repute, the defendant bought in the market thread, wound on spools, not made by the plaintiff, of inferior quality, and cheaper than his, and not bearing his name, but marked with the name of a firm of winders of thread, who were known to be accustomed to purchase of the plaintiff thread in the hank for the purpose of winding, and selling it when wound. Defendant sold the goods to a wholesale customer, with the assurance (given, as he said, without knowledge of any misrepresentation) that they were of the plaintiff's

make, and invoiced them to the customer under the description of certain numbers, which the plaintiff had adopted and exclusively used in order to designate his particular manufacture. The customer attached the plaintiff's name and numbers to the spools of thread, and retailed it to the public as of the plaintiff's make. *Held*, that, though the plaintiff had suffered a serious wrong, yet that there had not been that clear and distinct representation given to the world by the defendant of the goods being the goods of the plaintiff which would justify the court in granting an injunction against him, and the bill was dismissed, but without costs. 1866, *Vice Ch. Wood's Ct.*, Ainsworth *v.* Walmesley, *Law R.* 1 *Eq.* 518; S. C., 12 *Jurist*, (*N. S.*) 205; S. C., 14 *Weekly R.* 363; S. C., 14 *Law T.* (*N. S.*) 220; S. C., 35 *Law J.* (*N. S.*) *Ch.* 352.

See also § 769.

VIOLATION.

See INFRINGEMENT.

WORDS.

§ 1010. The court of chancery will not grant an injunction to restrain the issue of goods bearing labels containing a false representation, when such falsehood is not an infringement of any right vested in the plaintiff. The persons to whom prize medals have been awarded by the commissioners of the

International Exhibition, have not *ipso facto* any special property in the nature of a trademark in the words "prize medal." Therefore, where a person who had not obtained such a medal issued his goods with labels affixed to them bearing the words "Prize Medal, 1862," the court refused to interfere at the instance of a person who had obtained such a medal. *Semble:* If it had been shown that an order for "Prize Medal Pickles" would in the trade be answered by supplying the plaintiff's pickles, there might be some foundation for the interference of the court; because that depends upon the presumption that the purchaser does not know the name of the merchant and rests entirely on the reputation acquired by the particular goods. 1863, Batty *v.* Hill, 1 *H. & M.* 264; S. C., 11 *W. R.* 745; S. C., 8 *L. T. R.* (*N. S.*) 791; S. C., 2 *N. R.* 265.

§ 1011. The complainers, Wotherspoon and Co., manufacturing confectioners, applied for an interdict against the respondents, John Gray and Co., to prohibit them from vending lozenges made by the respondents or others except the complainers, under the style and title of "Victoria Lozenges," and from imitating, &c. The complainers said they were the first to apply the term "Victoria" to the lozenges manufactured by them, and thereby acquired right to the exclusive use of that name as a trademark. On the other hand, the respondents contended that the complainers had no exclusive right to the article, and no exclusive right to the same, even supposing they had been the first to apply the term "Victoria" to lozenges, which was denied. It was said to be quite a common thing to apply the name "Victoria" to

shawls, perfumery, and fancy articles in all sorts of trades, and that the first use of such a name by one manufacturer of an article well known in the trade gave him no exclusive right to the name, so as to prevent other traders from giving the same name to a similar article which is fairly and openly represented to be manufactured by themselves. The Lord Ordinary thought the doctrine well founded, and that by calling their lozenges "Wotherspoon's Victoria Lozenges" the complainers were not entitled to prevent the respondents from selling their lozenges under the name of "John Gray and Company's Victoria Lozenges." Interdict refused. 1863, *Court of Sessions, Scotland*, Wotherspoon *v.* Gray, 36 *Scottish Jurist*, 24.

§ 1012. A company cannot, by user, acquire an exclusive right to use, in its title of incorporation, a general term descriptive merely of the locality with which the business carried on by the company is connected; and the court will not restrain the use of such general term by a new company, even though it be in evidence that the former company may have been prejudiced by similarity of name. Protection of the word "Colonial" refused. 1864, *Rolls Court*, Colonial Life Assurance Company *v.* Home and Colonial Assurance Company (Limited), 33 *L. J. R.* (*N. S.*) *Ch.* 741; S. C., 33 *Beav.* 549.

§ 1013. Where the name "Ne Plus Ultra" had become common in the trade as applied to needles, it was held, that anybody might use that name to designate any quality of needles he pleased. 1866. *Vice Ch. Wood's Ct.*, Beard *v.* [illegible] 13 *L. T. R.* (*N. S.*) 747.

§ 1014. Where words, or names, are in common

use, the law does not permit such an appropriation of them to be made, so far as they are comprehended by such use, and for that reason, words and names having a known or established signification cannot, within the limits of such signification, be exclusively appropriated to the advancement of the business purposes of any particular individual, firm or company. The inability to make such appropriation out of them arises out of the circumstance that on account of their general or popular use, every individual in the community has an equal right to use them; and that right is, in all cases, paramount to the rights and interests of any one person, firm or company. What may alike be claimed and used by all, cannot be exclusively appropriated to advance the interests of any person. Numerous cases have been before the courts in which this limitation upon the use of words and names as trademarks has been maintained and established, and no good reason can be given for questioning or impeaching their conclusion. DANIELS, J. 1867, *N. Y. Supreme Court, G. T.*, Newman *v.* Alvord, 49 *Barb.* 588; S. C., affirmed, 51 *N. Y.* 189.

§ 1015. But while this limitation is entirely reasonable, there can be no propriety in extending it beyond the circumstance upon which it is founded. And accordingly any member of the community whose interests and business may be promoted by doing so, should be at liberty to apply even names and words in common use to the products of his industry, in such a manner as to indicate their origin or particular manufacture, where such application will not intrench upon and be in no way included in their use by the public. By doing so,

the rights of no member of the community can be in any manner infringed, and no public inconvenience whatever can be occasioned by it. The public will still be left at full liberty to use such words or terms as they were used before; while for specical purposes, a new office or purpose may be imposed upon them. In cases of that description no greater inconvenience or embarrassment can be found in protecting parties in the enjoyment of the new use or purpose engrafted upon a popular term than has been found in extending that protection to the case of a word created for the occasion, which was done in the case of Burnett *v.* Phalon. DANIELS, J. *Ibid.*

§ 1016. The object of the law in cases of this description, is to restrain and prevent fraud upon the manufacturer, and imposition upon the public. And that object would be entirely defeated, in many cases, if courts of justice were bound to withhold their protection from persons who imposed a new office and signification upon an old word for the purpose of rendering it serviceable as a trademark. There is no more reason for allowing a person's business to be laid open to the fraudulent invasions and misrepresentations of competing manufacturers and dealers in such a case than there would be where the term was entirely new and previously unused. Where one person, by means of superior skill, intelligence and industry, has created a valuable trade for his goods or wares in the market, and identified such trade by the appropriate use of terms, labels or devices, the party who simulates those terms, labels, or devices, for the purpose of diverting or securing the trade to himself, is guilty of a double fraud—upon the person creating the

trade and also upon the public. The man who goes upon the market in that manner, substantially represents that the goods or wares which he offers for sale are those of the person who first secured the public confidence for them. And the act embodies all the essential elements of fraud. The appropriation or use of terms of a public nature is sustained by well-considered and well-established authorities. DANIES, J. *Ibid.*

§ 1017. The use of the words "Washing Powder:" *Held*, not to constitute an infringement of plaintiff's label and trademark, which had those words upon them. 1868, *Supreme Ct. of Cal.*, Falkinburg *v.* Lucy, 35 *Cal.* 52.

§ 1018. In an action brought to enjoin the defendant from using the plaintiff's trademark, if the plaintiffs can be pronounced the first to use the word claimed by them, although it be a popular term, and one in general use, *e. g.*, the word Bismarck, as a designation of a particular style of goods made by them, and to have acquired by its manufacture and sale under that name a valuable interest in such designation, the defendant may be restrained from using it to the same purpose. The plaintiffs had the right to appropriate such name, in common with others, for a new purpose, and having done so, are entitled to avail themselves of all the advantages of their superior diligence and industry. 1868, *N. Y. Ct. of Com. Pleas, S. T.*, Meserole *v.* Tynberg, 4 *Abb. Pr.* (*N. S.*) 410; S. C., 36 *How. Pr.* 14.

§ 1019. There is no reason for making any distinction between a common word or term used for an original or new purpose which has accomplished its object and a new design adopted by a manufac-

turer. Both give currency to the articles to which they are applied, and distinguish them from other manufactures of a similar character. *Ibid.*

§ 1020. The word, symbol, or term, abstractly considered, is not the subject of special right or property, but it may become so when the application of it identifies a particular manufacture, and the thing made, and the word, term or symbol, as applied to it, are synonymous. Property in a word, for all purposes, cannot exist, but property in a word, as applied by way of a stamp upon goods, does exist the moment the goods once get into the market so stamped. Reputation in the market, whereby the stamp gets currency and an indication of superior quality, or of some other circumstance which would render the article so stamped acceptable to the public, is property. *Ibid.*

§ 1021. No absolute right of property can exist in a word. A person may enjoy the exclusive right to use a particular word upon a particular article, and yet have no right in respect to the same word when applied to another article. 1869, *N. Y. Supreme Ct., S. T.*, Amoskeag Manufacturing Co. *v.* Garner, 55 *Barb.* 151; S. C., 6 *Abb. Pr.* (*N. S.*) 265.

§ 1022. The Amoskeag Manufacturing Company had for making years manufactured *cotton cloths* exclusively, to which it applied the word "Amoskeag" as a trademark. The defendants subsequently made *prints*, and also used the word "Amoskeag." *Held*, that defendants had not invaded plaintiff's trademark. *Ibid.*

§ 1023. Terms in common use to designate a trade or occupation, in connection with other words indicating that a particular class of merchandise of the same general description is specially dealt in,

cannot be exclusively appropriated by any one as a trademark. The words "Antiquarian Book Store" cannot be protected as a trademark. 1870, *Supreme Ct. of Cal.*, Choynski *v.* Cohen, 39 *Cal.* 501.

§ 1024. Where there are a great number of persons who produce the same article, "original" means the first inventor. That is the meaning of the word "original" which the court of chancery has always recognized. The original inventor of a new manufacture, and persons claiming under him, are alone entitled to designate such manufacture as "the original;" and if he or they have been in the habit of so designating their manufacture, an injunction will be granted to restrain another manufacturer from applying the designation to his goods, 1871, *Rolls Court*, Cocks *v.* Chandler, *Law R.* 11 *Eq.* 446; S. C., 19 *Weekly R.* 593; S. C., 24 *Law Times* (*N. S.*) 379; S. C., 40 *L. J. R.* (*N. S.*) *Ch.* 575. And see § 610.

§ 1025. The original inventor of a sauce known as "Reading Sauce" had by long acquiescence lost the right of preventing other persons from manufacturing and selling a similar article under the same name. The plaintiff, who was successor in trade of the original inventor, described his sauce as "The Original Reading Sauce," and on a bill by him to restrain the defendant from selling his sauce by the same title, an injunction was granted against the use of the word "original," notwithstanding the original inventor's said acquiescence. There was no evidence that the defendant had ever sold any of his own Reading Sauce as the plaintiff's Reading sauce, or that any one had ever purchased the defendant's sauce in mistake for the plaintiff's Reading Sauce. *Ibid.*

§ 1026. When the spring first known as and named "Congress Spring" produces natural mineral water of peculiar medical and curative properties, possessed by no other spring, the words "Congress Water" and "Congress Spring Water" appropriately indicate the origin and ownership of the water flowing from Congress Spring, and the word "Congress," used in connection with the bottling and sale of such water, is a proper and legitimate trademark. 1871, *N. Y. Court of Appeals*, The Congress and Empire Spring Company *v.* High Rock Congress Spring Company, 45 *N. Y.* 291; S. C., 10 *Abb. Pr.* (*N. S.*) 348; reversing S. C., 57 *Barb.* 526.

§ 1027. Undoubtedly words or devices may be adoped as trademarks which are not original inventions of him who adopts them, and courts of equity will protect him against any fraudulent appropriation or imitation of them by others. Property in a trademark, or rather, in the use of a trademark or name, has very little analogy to that which exists in copyrights, or in patents for inventions. Words in common use, with some exceptions, may be adopted, if, at the time of their adoption, they were not employed to designate the same or like articles of production. The office of a trademark is to point out distinctively the origin or ownership of the article to which it is affixed; or, in other words, to give notice who was the producer. This may, in many cases, be done by a name, a mark, or a device well known, but not previously applied to the same article. 1871, *U. S. Supreme Court*, Delaware and Hudson Canal Company *v.* Clark, 13 *Wall.* 311.

§ 1028. Though it is not necessary that the word adopted as a trademark should be a new creation,

never before known or used, there are some limits to the right of selection. This will be manifest when it is considered that in all cases where rights to the exclusive use of a trademark are invaded, it is invariably held that the essence of the wrong consists in the sale of the goods of one manufacturer or vendor as those of another; and it is only when this false representation is directly or indirectly made that the party who appeals to a court of equity can have relief. This is the doctrine of all the authorities. *Ibid.*

§ 1029. Plaintiff had been engaged since 1851, in manufacturing gin in Holland; the name "Wolfe's Schiedam Aromatic Schnapps" impressed on the bottles and forming part of the labels was devised by him to denote his goods; in the trade this name was fully recognized as his trademark; the phrase "Schiedam Schnapps" was fully recognized as his peculiar property, in that it expressed the origin and ownership of his goods, and suggested to the general public, who had occasion to buy gin, the liquor made, imported and bottled by him. Defendants had for some time been putting up and selling a gin adulterated with water in bottles similar in appearance to those of plaintiffs, with labels which were merely colorable imitations of the name, mark, devices and symbols of plaintiff, being headed "Wolfe's Aromatic Schiedam Schnapps," and signed at the foot "Wolfe" instead of the "Udolpho Wolfe" of the genuine label, and with words blown on the sides of the bottles well calculated to mislead a purchaser who did not make an unusually careful scrutiny. "It is vain for defendants to urge that the several words which compose the name given by plaintiff

to his goods are not new. His combination of these words is proved to have been new, and it is proved to indicate the origin and ownership of the liquor, and the defendants have no right to filch this combination, or any important part of it, in such a way as to mislead the purchaser as to its real origin and ownership." Defendants were enjoined from selling any article under the name of "Wolfe's Aromatic Schiedam Schnapps" or "Aromatic Schiedam Schnapps" or "Schiedam Schnapps," or from using any imitation of said name. 1872, *Supreme Ct. of Louisiana*, Wolfe *v.* Barnett, 24 *La. An.* 97. But see §§ 648, 661, 664.

§ 1030. Plaintiff claimed to be solely and exclusively possessed of and entitled to the recipe for making a certain medical preparation or ointment called "Dr. Johnson's or Singleton's Golden Ointment" or "Singleton's Golden Eye Ointment," known in the trade and to the medical profession and the public generally by the name of "The Golden Ointment." It was alleged that the receipe was discovered between two or three hundred years ago by Dr. Johnson, a celebrated physician. The defendant had for some time past sold a preparation called "Dr. Rooke's Golden Ointment," and the suit was instituted by plaintiff for an injunction to restrain defendant from selling, or publishing or advertising for sale any ointment, or medical preparation in the nature of an ointment, under the title of "Dr. Rooke's Golden Ointment," or under any other title or description which should be an infringement of the title and designation of the plaintiff's "Golden Ointment," on the ground that the plaintiff had an exclusive right to the use of the word "Golden," as applied to ointment. The

right to the description "Golden Ointment" was the subject of litigation as far back as 1832, and in the case at that time before the court the plaintiff obtained an injunction. Plaintiff moved for an interlocutory injunction. The Vice Chancellor said that, considering the existing state of the authorities, all he could decide at present was, that he was not at liberty to grant an interlocutory injunction, but must order the motion to stand over to the hearing of the cause. 1872, *V. C. Wickens*, Green *v.* Rooke, *W. N.* 1872, 49.

§ 1031. Where words or names are in common use, no one person can claim a special appropriation of them to his peculiar use; but where words and the allocations of words, have, by long use, become known as designating the article of a particular manufacturer, he acquires a right to them, as a trademark, which competing dealers cannot fraudulently invade. The essence of the wrong is the false representation and deceit. When the improper design is apparent, an injunction should be issued. 1873, *N. Y. Supreme Ct. G. T.*, Lea *v.* Wolf, 15 *Abb. Pr.* (*N. S.*) 1; S. C., 1 *T. & C.* 626; S. C., 46 *How. Pr.* 157; modifying S. C., 13 *Abb. Pr.* (*N. S.*) 389.

§ 1032. Words which in their ordinary and universal use denote the virtues, such as "Charity," "Faith," &c., cannot ordinarily be appropriated by any one as a title or designation for a book, play, &c., written, &c., by him, treating or enforcing, symbolizing, &c., a virtue, to the exclusion of any other person who may write, &c., a book, play, &c., treating upon, enforcing, symbolizing, &c., the same virtue. There may be cases where a title is made use of in bad faith, or to promote some imposition,

or to inflict a wrong, when a court of justice should interfere to prevent its use or to compensate a party who has in consequence sustained an injury. 1874, *N. Y. Superior Ct. S. T.*, Isaacs *v.* Daly, 39 *N. Y. Superior Ct.* (7 *J. & S.*) 511.

§ 1033. There can be no right to the use of mere generic words. Hence, "Julienne," designating a manufactured article for julienne soup, does not denote origin or ownership, and like "Schnapps" and "Club House Gin," it is a word used merely to designate the article or its quality. 1875, *N. Y. Superior Ct. S. T.*, Godillot *v.* Hazard, 49 *How. Pr.* 5.

§ 1034. The words "conserves alimentaire," which are alike applicable to every description of preserved or dessicated food, do not relate exclusively to the name or quality of any particular preparation, and are therefore the subject of an exclusive appropriation in connection with words which do not denote the name or quality; and in that sense they may be regarded as designating the true origin or ownership of a manufacture upon the label on which they appear. *Ibid.*

§ 1035. A copy of the coat of arms of the city of Paris, when in connection with other marks, words or devices, not denoting name or quality, will cover a property in it, which will prevent its use in the same connection or combination by another person. *Ibid.*

§ 1036. The words "conserves alimentaire," or the coat of arms of the city of Paris as a symbol, used upon packages of "Julienne" for julienne soup, could, if it was necessary, be separately regarded as a trademark. *Obiter. Ibid.*

§ 1037. Where it was shown that the word

"Caporal" had been used in connection with manufactured tobacco for many years prior to its appropriation by the plaintiff as a trademark it was *held*, that he was not entitled to its exclusive use as a trademark for tobacco. 1877, *N. Y. Supreme Ct. S. T.*, Kinney *v.* Basch, unreported.

§ 1038. The symbols of a crown, a horseshoe, and words "Best," "Scrap," "Plating," &c., are symbols and words common to the iron trade. 1877, *V. C. Malins*, *In re* Barrow's Application, 46 *L. J. R.* (*N. S.*) *Ch.* 450; and see S. C., on appeal, 25 *Weekly R.* 564.

See DESCRIPTIVE NAME, FANCY NAME, and also § 193.

TRADEMARK TABLE.

EXCLUSIVE OF FRENCH CASES.

I. FANCY NAMES AND DEVICES PROTECTED.

"*Pessendede*" (watches). 1833, Vice Chancellor's Ct., Eng., Gout *v.* Aleploglu.

"*H. H.* 6" (ploughshares). 1834, Vice Chancellor's Ct., Eng., Ransom *v.* Bentall.

"*Morrison's Universal Medicine.*" 1841, Common Pleas, Eng., Morrison *v.* Salmon.

"*Taylor's Persian Thread.*" 1844, U. S. Circuit Ct., STORY, J., Taylor *v.* Carpenter; 1846, N. Y., Ct. of Errors, Taylor *v.* Carpenter; 1854, Vice Ch. WOOD, Eng., Taylor *v.* Taylor.

"*Ethiopian*" (stockings). 1846, Vice Chancellor's Ct., Eng., Hine *v.* Lart.

"*Chinese Liniment.*" 1849, U. S. Circuit Ct., Ind., Coffeen *v.* Brunton.

"*Pain Killer.*" 1850, Sup. Ct., R. I., Davis *v.* Kendall; 1867, Vice Ch.'s Ct., Canada, Davis *v.* Kennedy.

"*Genuine Yankee Soap.*" 1857, N. Y. Superior G. T., William *v.* Johnson; 1863, N. Y. Superior S. T., Williams *v.* Spence.

"*Cocoaine*" (Infringement: "*Cocoïne*"). 1359, N. Y. Superior, 1867, N. Y. Court of Appeals, Burnett *v.* Phalon.

"*Roger Williams Long Cloth.*" 1860, Sup. Ct., R. I., Barrows *v.* Knight.

"*Dr. Morse's Indian Root Pills*" 1860, N. Y. Sup. S. T., Comstock *v.* White.

"*Cross Cotton.*" 1861, Vice Ch. Wood, Eng., Cartier *v.* May.

"*Excelsior*" (soap). 1863, Vice Ch. Wood, Eng., Braham *v.* Bustard.

"*L. L.*" (whiskey). 1863, Lord Ch. Brady, Ireland, Kinahan *v.* Bolton.

"*Diamond State*" (matches). 1865, N. Y. Superior, G. T., Swift *v.* Dey.

"303" (pens). 1877, N. Y. Supreme, 1872; N. Y. Com. of Appeals, Gillott *v.* Esterbrook.

"*Sweet Opoponax of Mexico*" (perfume). 1867, N. Y. Sup. G. T., Smith *v.* Woodruff.

"*Mrs. Winslow's Soothing Syrup.*" 1867, N. Y. Com. Pleas. G. T., Curtis *v.* Bryan.

"*Govan**" (iron). (Infringement: "*Coats **"). 1867, Sessions, Scotland, Dixon *v.* Jackson.

"*Cocoatina*" (Infringement: "*Cocoatine*"). 1868, Vice Ch. Malins, Eng., Schweitzer *v.* Atkins.

"*Bismarck*" (collars). 1868, N. Y. Com. Pleas, S. T., Messerole *v.* Tynbergh.

"*The Hero*" (jars).

"*The Heroine*" (jars). 1868, Com. Pleas, Phil. Pa., Rowley *v.* Houghton.

"*Charter Oak*" (stoves). 1869, Sup. Ct. Mo., Filley *v.* Fassett.

"*Bovina*" (pomade). (Infringement: "*Bovoline*"). 1869, Lockwood *v.* Bostwick.

"*Live and Let Live*" (restaurant sign). Genin *v.* Chadsey.

"*Hall's Vegetable Sicilian Hair Renewer.*" 1870, Com. Pleas, Phil. Pa., Gillis *v.* Hall.

"*Grenade Syrup.*" 1870, N. Y. Sup. S. T., Rillet *v.* Carlier.

"*Original Reading Sauce.*" 1871, Rolls Ct., Eng., Cocks *v.* Chandler.

"*Congress Water*" "*Congress Spring Water.*" 1871, N. Y. Ct. of Appeals, Congress & Empire Spring Co. *v.* High Rock Congress Spring Co.

"*Turin*" (cloth).
"*Leopold*" "
"*Sefton*" "
"*Liverpool*" "
1872, Vice Ch. Bacon, Eng., Hirst *v.* Denham.

"*Eureka*" (shirts). 1872, Ch. Ct. of Appeals, Eng., Ford *v.* Foster.

"*Exactly twelve yards*" (in Turkish).
"*Exactly twelve yards*" (in Armenian).
"*Exactly twelve yards*" (in Roman). 1872, Ch. Ct. of Appeals, Eng., Broadhurst *v.* Barlow.

"*Aromatic Schiedam Schnapps.*" 1872, Sup. Ct. La., Wolfe *v.* Barnett. *Contra*, Wolfe *v.* Goulard; Burke *v.* Cassin.

"*Keystone Line*" (steamships). 1872, Com. Pleas, Phil. Pa., Stetson *v.* Winsor; 1872, Com. Pleas, Phil. Pa., Winsor *v.* [illegible]de.

"*The ✡ Shirt*" 1872, U. S. Circuit, Conn., Morrison *v.* Case.

"*Mark Twain*" (*nom de plume*). 1873, N. Y. Sup. S. T., Clemens *v.* Such.

"*Conserves Alimentaire.*" 1875, N. Y. Superior S. T., Godillot *v.* Hazard.

"½" (cigarettes). 1877, N. Y. Sup. S. T., Kinney *v.* Basch, and see Kinney *v.* Allen.

"*B. B. H*" (iron). 1877, Ch. Ct. of Appeals, Eng., In re Barrow's Application.

See also, 1842, Crawshay *v.* Thompson; 1861, Henderson *v.* Jorp; 1862, Cartier *v.* Carlile; 1863, Hall *v.* Barrows; 1863, Edelsten *v.* Eldesten; 1863, Wotherspoon *v.* Gray; 1871, Sohl *v.* Geisendorf; 1872, Smith *v.* Reynolds; 1875, Morse *v.* Cornwell, and other cases in the digest.

II. GEOGRAPHICAL NAMES.

a. Protected.

"*Anatolia*" (liquorice). 1864, Vice Ch. Wood, Eng., McAndrew *v.* Bassett.

"*Seixo*" (wine). 1866, Lord Ch. Cranworth, Seixo *v.* Provezende.

"*Pall Mall Guinea Coal.*" 1869, Ch. Ct. of Appeal, Eng., Lee *v.* Haley.

"*Glenfield*" (starch). 1872, House of Lords, Wotherspoon *v.* Currie.

"*Leopoldshall*" (kainit). 1872, Vice Ch. Wickens, Eng., Radde *v.* Norman.

"*Akron*" (cement). 1872, N. Y. Com. of Appeals, Newman *v.* Alvord.

"*Worcestershire*" (sauce). 1873, N. Y. Sup. S. T., Lea *v.* Wolf.

"*Appollinaris*" (mineral water). 1875, Vice Ch. Bacon, Eng., Appollinaris Co. (Limited) *v.* Norrish.

"*St. James*" (cigarettes). 1877, N. Y. Sup. S. T., Kinney *v.* Basch.

And see other cases in the digest.

b. Not protected.

"*Colonial.*" 1864, Rolls Ct., Eng., Colonial Life Assurance Co. *v.* Home and Colonial Life Assurance Co. (Limited).

"*Moline, Ill.*" (ploughs). 1870, Sup. Ct. Ill., Candee *v.* Deere.

"*Lackawanna*" (coal). 1871, U. S. Sup. Ct., Delaware and Hudson Canal Co. *v.* Clark.

"*Glendon*" (iron). 1874, Sup. Ct., Pa., Glendon Iron Co. *v.* Uhler.

"*Durham*" (tobacco). 1875, Sup. Ct., N. C., Blackwell *v.* Wright, and see Blackwell *v.* Armistead.

And see other cases in the digest.

III. DESCRIPTIVE NAMES AND WORDS IN COMMON USE NOT PROTECTED.

"*Dr. Johnson's Yellow Ointment.*" 1783, Kings Bench, Singleton *v.* Bolton.

"*Velno's Vegetable Syrup.*" 1813, Vice Chancellor's Ct., Eng., Canham *v.* Jones.

"*Thomsonian Medicines*." 1837, Sup. Jud'l Ct., Mass., Thomson *v.* Winchester.

"*A. C. A*" (tickings). 1849, N. Y. Superior S. T., Amoskeag Mfg. Co. *v.* Spear.

"*Cylinder*" (glass).
"*Lake*" (do.)
"*New York*" (do.)
"*Galen*" (do.) 1853, N. Y. Sup. S. T., Stokes *v.* Landgraff.

"*Balm of Thousand Flowers*." 1857, N. Y. Superior, S. T., Fetridge *v.* Wells; and see Fetridge *v.* Merchant.

"*Aromatic Schiedam Schnapps*." 1859, N. Y. Sup. S. T., Wolfe *v.* Goulard; 1873, Sup. Ct., Cal., Burke *v.* Cassin. *Contra*, Wolfe *v.* Barnett.

"*Club House Gin*." 1860, N. Y. Superior, G. T., Corwin *v.* Daly.

"*Paraffine Oil*." 1862, Vice Ch. Wood, Eng., Young *v.* Macrae.

"*Prize Medal*, 1862" (pickles). 1863, Vice Ch. Wood, Eng., Batty *v.* Hill.

"*Extract of Night Blooming Cereus*." 1864, Com. Pleas, Phil. Pa., Phalon *v.* Wright.

"*Old London Dock Gin*." 1865, N. Y. Com. Pleas, S. T., Bininger *v.* Wattles.

"*Parlor Match*." N. Y. Superior, G. T., Swift *v.* Dey.

"*Holbrook's*" (school apparatus). 1866, Chicago, Superior Ct., Sherwood *v.* Andrews.

"*Ne plus ultra*" (needles). 1866, Vice Ch. Wood, Eng., Beard *v.* Turner.

"*Liebig's Extract of Meat.*" 1867, Vice Ch. Wood, Eng., Liebig's Extract of Meat Co. (Limited) *v.* Hanbury.

"*Ferro-Phosphorated Elixir of Calisaya Bark.*" 1867, N. Y. Com. Pleas; 1874, N. Y. Ct. of Appeals, Caswell *v.* Davis.

"*Washing Powder.*" 1868, Sup. Ct. Cal., Falkinburgh *v.* Lucy.

"*Desiccated Codfish.*" 1868, N. Y. Com. Pleas, G. T., Town *v.* Stetson.

"*Wheeler and Wilson*" (sewing-machines). 1869, Vice Ch. James, Eng., Wheeler and Wilson Mfg. Co. *v.* Shakespear. But see Singer Mfg Co. *v.* Kimball, and Singer Mfg. Co. *v.* Wilson.

"*Antiquarian Book Store.*" 1870, Sup. Ct. Cal., Choynski *v.* Cohen.

"*A No.* 1" (ploughs).
"*A X No.* 1" do.
"*No.* 1" do.
"*X No.* 1" do.
"*No.* 3" do.
"*B. No.* 1" do. 1870, Sup. Ct. Ill., Candee *v.* Deere.

"*Nourishing Stout.*" 1873; Vice Ch. Malins, Raggett *v.* Findlater.

"*Gold Medal.*" 1874, N. Y. Ct. of Appeals, Taylor *v.* Gillies.

"*Charity*" (name of a play). 1874, N. Y. Superior S. T., Isaacs *v.* Daly.

"*Julienne*" (for julienne soup). 1875, N. Y. Sup. S. T., Godillot *v.* Hazard.

"*Tucker Spring Bed.*" 1875, U. S. Circuit Ill., Tucker Mfg. Co. *v.* Boyington.

"*Best*" (iron).
"*Scrap*" do.
"*Plating*" do.
1877, Ch. Ct. of Appeal. In re Barrow's Application.

"*Cherry Pectoral*" (medicine for coughs, colds, &c.). 1877, N. Y. Com. Pleas, G. T., Ayer *v.* Rushton.*

And see Edelsten *v.* Vick; Wotherspoon *v.* Gray; and other cases in the digest.

IV. ALLEGED TRADEMARKS NOT PROTECTED, BY REASON OF MISREPRESENTATION.

"*Hoxqua's Mixture.*" 1857, Pidding *v.* How.

"*Medicated Mexican Balm.*" 1842, Perry *v.* Truefitt.

"*Dr. Wistar's Balsam of Wild Cherry.*" 1847, Fowle *v.* Spear.

"*Flavell's Patent Kitchener.*" 1853, Flavell *v.* Harrison.

"*Kathairon.*" 1855, Heath *v.* Wright.

"*Balm of Thousand Flowers.*" 1857, Fetridge *v.* Wells. And see Fetridge *v.* Merchant.

"*Meen Fun.*" 1860, Hobbs *v.* Francais.

* Now in the Court of Appeals for review.

"*Extract of Night Blooming Cereus.*" 1864, Phalon *v.* Wright.

"*Patent Plumbago Crucibles.*" 1866, Morgan *v.* M'Adam.

"*Golden Crown Cigars.*" 1869, Palmer *v.* Harris.

"*Laird's Bloom of Youth, or Liquid Pearl.*" 1872, Laird *v.* Wilder.

"*Mason's Patent, November* 30, 1858." 1874, Consolidated Fruit Jar Co. *v.* Dorflinger.

"*Capcine Plasters.*" 1877, Seabury *v.* Grosvenor.

See also. 1848, Patridge *v.* Menck; 1865, Leather Cloth Co. (Limited) *v.* American Cloth Co.; 1866, Sherwood *v.* Andrews; 1875, Eastcourt *v.* Estcourt Hop Essence Co. (Limited), and other cases in the digest.

V. INJUNCTIONS REFUSED BY REASON OF DELAY, ACQUIESCENCE, FAILURE OF PROOF, AND WANT OF JURISDICTION.

"*Great Mogul*" (cards). 1742, Blanchard *v.* Hill.

"*M. C.*" (tin plates). 1857, Motley *v.* Downman.

1847, London and Provincial Law Assurance Society *v.* London and Provincial Joint Stock Life Ins. Company.

"*London Manure Co.*" 1848, Purser *v.* Brain.

1854, Ames *v.* King; 1855, Merrimack Mfg. Co. *v.* Garner.

"*Aramingo Mills.*" 1860, Colloday *v.* Baird.

1866, Green *v.* Shepherd; 1866, Beard *v.* Turner; 1866, Ainsworth *v.* Walmesley.

"*Lloyd's Euxesis.*" 1870, Hovenden *v.* Lloyd.

"*Silver Brook Whiskey.*" 1871, Seltzer *v.* Powell.

1871, Isaacson *v.* Thompson.

"*Golden Ointment.*" 1872, Green *v.* Rooke.

"*Chlorodyne.*" 1874, Browne *v.* Freeman.

1874, Rodgers *v.* 1875, Rodgers; Eastcourt *v.* Estcourt Hop Essence Co. (Limited).

And see other cases in the digest.

VI. NAMES OF HOTELS AND VEHICLES; BUSINESS SIGNS, &C.

"*Irving House,*" protected. 1850, N. Y. Superior S. T., Stone *v.* Carlan.

"*Revere House,*" protected. 1851, Sup. Jud'l Ct. Mass., March *v.* Billings.

"*Irving House,*" protected. 1851, N. Y., Superior S. T., Howard *v.* Henriques.

"*Howe's Bakery,*" protected. 1860, N. Y. Superior G. T., Howe *v.* Searing.

"*What Cheer House.*" 1863, Sup. Ct. Cal., Woodward *v.* Lazar.

"*McCardel House*," protected. 1864, N. Y. Sup. G. T., McCardel *v.* Peck.

"*Prescott House*," protected. 1871, N. Y. Superior, S. T., Deiz *v.* Lamb.

"*Antiquarian Book Store*," not protected. 1870, Sup. Ct. Cal., Choynski *v.* Cohen.

"*Mammoth Wardrobe*," not protected. 1871, Circuit Ct. Mich., Gray *v.* Koch.

"*Wood's Hotel*," protected. 1875, Circuit Ct. Ill., Woods *v.* Sands.

And see 1836, Knott *v.* Morgan; 1853, Burgess *v.* Burgess; 1857; Peterson *v.* Humphrey; 1865, Glenny *v.* Smith; 1868, Colton *v.* Thomas; 1874, Glen and Hall Mfg. Co. *v.* Hall; 1875, Devlin *v.* Devlin; 1876, Booth *v.* Jarrett; and other cases in the digest.

VII. LABELS.

a. Protected.

See, 1816, Day *v.* Day; 1831, Day *v.* Binning; 1843, Croft *v.* Day; 1845, Coats *v.* Holbrook; 1847, Franks *v.* Weaver; 1849, Amoskeag Mfg. Co. *v.* Spear; 1853, Edelsten *v.* Vick; 1854, Shrimpton *v.* Laight; 1854, Taylor *v.* Taylor; 1856, Walton *v.* Crowley; 1856, Stewart *v.* Smithson; 1857, Clark *v.* Clark; 1857, Williams *v.* Johnson; 1861, Dale *v.* Smithson; 1865, Harrison *v.* Taylor; 1865, Southorn *v.* Reynolds; 1867, Stephens *v.* Peel; 1867, Curtis *v.* Bryan; 1868, Boardman *v.* Meriden Britannia Co.; 1869, Lockwood *v.* Bostwick; 1870, Dixon Crucible Co. *v.* Guggenheim; 1871, Hostet-

ter *v.* Vowinkle; 1871, Gardner *v.* Bailey; 1871, Abbott *v.* Baker and Confectioners' Tea Association; 1872, Blackwell *v.* Armistead; 1873, Lea *v.* Wolf; 1874, Brown *v.* Mercer; 1875, Godillot *v.* Hazard; 1876, Amoskeag Mfg. Co. *v.* Garner; 1877, Kinny *v.* Basch; 1877, Hennessy *v.* Wheeler; and other cases in the digest.

b. Not protected.

See, 1846, Partridge *v.* Menck; 1850, Foot *v.* Lea; 1855, Merrimack Mf'g. Co. *v.* Garner; 1860, Colloday *v.* Baird; 1863, Woolam *v.* Ratcliff; 1865, Leather Cloth Co. (Limited) *v.* American Cloth Co. (Limited); 1866, Ainsworth *v.* Walmesley; 1867, Blackwell *v.* Crabb; 1867, Faber *v.* Faber; 1868, Falkinburgh *v.* Lucy; 1869, Bass *v.* Dawber; 1869, Ferguson *v.* Davol Mills; 1868, Amoskeag Mfg. Co. *v.* Garner; 1871, Scoville *v.* Toland; 1875, Blackwell *v.* Wright; and other cases in the digest.

VIII. PUBLICATIONS.

See, 1802, Walcott *v.* Walker; 1803, Hogg *v.* Kirby; 1816, Lord Byron *v.* Johnston; 1877, Southey *v.* Sherwood; 1821, Edmonds *v.* Benbow; 1825, Snowden *v.* Noah; 1840, Bell *v.* Locke; 1846, Spottiswoode *v.* Clark; 1848, Clark *v.* Freeman; 1850, Jollie *v.* Jaques; 1855, Chappell *v.* Sheard, Chappell *v.* Davidson; 1856, Prowett *v.* Mortimer; 1859, Clement *v.* Maddick; 1859, Dayton *v.* Wilkes; 1859, Ingram *v.* Stiff; 1859, Bradbury *v.* Dickens; 1860, Brook *v.* Evans; 1860, Har-

per *v.* Pearson ; 1862, Burrows *v.* Foster ; 1864, Browne *v.* Freeman ; 1867, Hogg *v.* Maxwell, Maxwell *v.* Hogg ; 1868, Stevens *v.* Paine ; 1868, Stephens *v.* De Conto ; 1868, Kelly *v.* Hutton ; 1869, Dixon *v.* Holden ; 1869, Bradbury *v.* Beeton ; 1869, Wheeler and Wilson Mfg. Co. *v.* Shakespear ; 1872, Osgood *v.* Allen ; 1873, Christie *v.* Christie ; 1873, Clemens *v.* Such ; 1874, Isaacs *v.* Daly ; 1875, Tallcott *v.* Moore ; 1876, American Grocer Publishing Association *v.* Grocer Publishing Co ; and other cases in the digest.

IX. FIRM NAMES.

See, 1791, Webster *v.* Webster ; 1835, Lewis *v.* Langdon ; 1857, Peterson *v.* Humphrey ; 1858, Fenn *v.* Bolles ; 1859, Churton *v.* Douglas ; 1861, Bowman *v.* Floyd ; 1864, Johnson *v.* Hellely ; 1864, Bury *v.* Bedford ; 1865, Banks *v.* Gibson ; 1866, Dickson *v.* M'Master ; 1866, Scott *v.* Scott ; 1867, Rodgers *v.* Taintor ; 1871, Reeves *v.* Denicke ; 1872, Weed *v.* Peterson ; 1872, Scott *v.* Rowland ; 1872, Morse *v.* Hall ; 1872, Sohier *v.* Johnston ; 1875, Phelan *v.* Collender ; 1876, Carmichael *v.* Latimer ; and other cases in the digest.

X. RESTRAINT IN THE USE OF ONE'S OWN NAME.

See, 1824, Sykes *v.* Sykes ; 1843, Croft *v.* Day ; 1847, Rodgers *v.* Nowill ; 1850, Holloway *v.* Holloway ; 1853, Burgess *v.* Burgess ; 1857, Clark *v.*

Clark ; 1855, Southorn *v.* Reynolds ; 1867, Howe *v.* Howe Machine Co.; 1869, Emerson *v.* Badger ; 1870, Stonebreaker *v.* Stonebreaker ; Coats *v.* Platt ; 1871, Lazenby *v.* White ; 1872, James *v.* James ; 1872, Hallett *v.* Cumston ; 1872, McGowan Bros. Pump and Machine Co. *v.* McGowan ; 1872, Meriden Britannia Co. *v.* Parker ; 1874, Wolfe *v.* Burke ; 1875, Meneely *v.* Meneely ; 1875, Devlin *v.* Devlin ; 1875, Gourard *v.* Trust ; 1876, Decker *v.* Decker ; 1877, Prince Metallic Paint Co. *v.* Carbon Metallic Paint Co.; and other cases in the digest.

DIGEST OF FRENCH DECISIONS.

BY

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PREFATORY NOTE.

Before the revolution there were no trademarks, as now understood, in France. There were certain obligatory marks required to be placed on objects of manufacture to designate the manufacturer, the quality of the goods, and mode of manufacture. Trademarks, as we understand them, were, therefore, of no advantage. In 1791, the legislature abolished all laws with reference to the surveillance of the mode of manufacture, and obligatory marks. Private marks soon came into use, and being protected by no law, were infringed. The people, also, were cheated by spurious goods. Protection was first accorded to marks by the law of 19 brumaire, year VI (1797), relative to the guarantees of articles of gold and silver. This law obliged each manufacturer to mark with a private stamp, in addition to that of the government, every article of gold and silver that went from his factory.

By law of 23 nivôse, year IX (1801) manufacturers of hardware and cutlery at Orleans, and by law of 7 germinal, year X (1802), manufacturers

of oriental hosiery were authorized to stamp their goods with private marks. No penalty, however, was named for an infringement of a mark.

The first general law on the subject of trade-marks, is dated 22 germinal, year XI (1803). Title IV of that act granted to every manufacturer or artisan the right to apply a particular mark to his products, and to obtain the exclusive use thereof, by its deposit at the registry of the Tribunal of Commerce. Infringements were punished by the penalties against forgery of private writings; and damages to owner of mark.

By law of 1809, marks were required to be deposited with the secretary of the "Counsel des Prud'hommes," in addition to their deposit at the registry of the Tribunal of Commerce.

The Penal Code (enacted 1810, art. 142), punished by imprisonment those counterfeiting marks of commercial houses, and (art. 143), by degradation from civil rights those improperly using genuine stamps, marks and seals.

The severe penalties, pronounced against infringement of the above laws, made their enforcement nearly impossible. The decree of September 5, 1810, only imposed a fine of three hundred francs on those who infringed the marks allowed by law of 23 nivôse, year IX, on hardware and cutlery.

In the interest of consumers, three decrees, April 1, 1811, September 18, 1811, and December 22, 1812, rendered marks of manufacture obligatory on each cake of soap made. Omission or untruthfulness of mark, or any fraud in manufacture by the introduction of substances designed to change the quality of the soap, subjected the maker to a fine of three thousand francs.

By decree of July 25, 1810, the manufacturers of the city of Louviers were granted the exclusive right to use a yellow and blue border to their cloths. A decree of December 22, 1810, granted to all other cities of France the right to use borders peculiar to themselves. The infringement of the mark of Louviers was punished by a fine; that of a city, the same as expressed in law of year XI. Thus, what was a misdemeanor in one case, was a felony in the other. These decrees never went into execution, as the first was suspended by notice April 30, 1811; and the other was superseded by that of December 17, 1813, granting to every manufacturer of cloth the right to adopt a border of his choice.

Various laws were made between 1810 and 1824, requiring stamps and marks to be placed on cloths and playing cards by their manufacturers (to facilitate the collection of duties on foreign fabrics, &c.), and on poisons by pharmaceutists.

The general law of July 18, 1824, left in force the law of year XI, and sections 142 and 143 of the Penal Code in reference to marks, and sought to protect the use of names of persons and places.

In 1857 a general law, superseding all former laws, in relation to marks, was passed.* But it did not repeal nor supersede the law of 1824, in ref-

* The phrase "mark of manufacture or of commerce" is used in the law; marks of manufacture being the marks used by the manufacturer to distinguish his manufactures, and marks of commerce those employed by the merchant to distinguish the goods sold by him. The whole phrase may be translated by one word, —trademark. French authors, in translating trademark into the French language, have used one or other of said terms, *marque de fabrique* or *marque de commerce*. In the treaty of 1869, between France and the United States, *trademark* and *marque de fabrique* are used interchangeably.

erence to names, &c., nor take away the right of action which existed under art. 1382, of the Civil Code, for unlawful rivalry in business. The law of 1857 is not intended as a verification by the state of the quality or nature of the merchandise, but only as a proof of its origin.

In 1873 a law was made granting the guaranty of the government to the genuineness of a trademark, by the stamp of the government affixed under certain regulations.

Under a treaty made with France April 16, 1869, citizens of the United States enjoy the same rights to trademarks in France as French citizens. Before the treaty our citizens had no right of action in France for infringements of trademarks.

That the reader may have a better understanding of the cases digested, extracts from such of the statutes referred to, as are of use, are given. The statute applicable to each case will be evident either from the date or direct reference in the syllabus.

The cases have been arranged, with a few exceptions, chronologically. Those in reference to practice and local interests have been omitted.

F. F.

NEW YORK, *Nov.* 15, 1877.

FRENCH STATUTES.

LAW OF 22 GERMINAL YEAR XI (1803).

RELATIVE TO FACTORIES AND WORKSHOPS.

Title IV. Of Private Marks.

Art. 16. The infringement of private marks, which every manufacturer or artisan has the right to apply upon the objects of his manufacture, gives rise,—1st, to damages and interest to him whose mark shall have been infringed; 2nd, to the application of the penalties pronounced against forging private writings.

Art. 17. The mark shall be considered as infringed when the words "Façon de * * *" (style of) and at the end the name of another manufacturer, or of another city shall have been inserted.

Art. 18. No one can bring an action for infringment of his mark, unless he has made it known at the beginning in a legal manner, by the deposit of a copy in the registry office of the tribunal of commerce where the chief place of manufacture or the shop is situated.

CIVIL CODE (MARCH 21, 1804).

Art. 1382. Every act of man which causes dam-

age to another, obliges the one by whose fault it has happened to repair it.

Article 1383. Every one is responsible for the damage which he has caused, not only by his act, but also by his negligence or by his imprudence.

PENAL CODE (FEBRUARY 10, 1810).

Art. 142. Those who shall have counterfeited the marks intended to be placed in the name of the government on the different kinds of agricultural products or merchandise, or who shall have made use of these false marks; those who shall have counterfeited the seal, stamp or mark of any one in authority, or of a private banking or commercial establishment, or who shall have made use of counterfeit seals, stamps or marks, shall be punished by imprisonment.

(In 1863, this law was amended and modified. It is not necessary for our purpose to give amendment.)

LAW OF JULY 28, 1824.

Article 1st. Whosoever shall either affix, or make appear by addition, retrenchment or by any alteration, upon manufactured articles, the name of a manufacturer other than he who is the producer, or the name of a manufactory other than that where said articles were made, or finally, the name of a place other than that of the manufacture, shall be punished by the penal-

ties specified in article 423 of the Penal Code, without prejudice to a decree for damages if there be occasion therefor. Every merchant, factor or retailer, whosoever, shall be liable to an action when he shall knowingly have exposed for sale, or put in circulation objects marked with fictitious or altered names.

Article 2nd. In consequence hereof the infraction above mentioned shall cease, notwithstanding Art. 17, of the law of April 12, 1803 (22 Germinal year XI), to be comprised in the infringement of private marks, provided for by articles 142 and 143 of the Penal Code.

LAW OF JUNE 23, 1857, ON TRADEMARKS.

Title I. Right of Property in Marks.

Art. 1. The mark of manufacture or of commerce is optional. However, decrees rendered in the form of rules of public administration may always make it, in particular cases, obligatory for the products which they specify. Are considered as marks of manufacture and of commerce; names under a distinctive form, "titles," emblems, imprints, stamps, seals, vignettes, reliefs, letters, numerals, wrappers and every other sign serving to distinguish the products of a manufactory or the objects of trade.

Art. 2. No one can claim exclusive ownership in a trademark unless he has deposited two copies of the trademark at the Registry of the Tribunal of Commerce of his domicile.

Art. 3. The deposit has effect for only fifteen years.

The ownership of the mark can always be preserved for a new term of fifteen years by means of a new deposit.

Art. 4. (Fees.)

Title II. Dispositions Relative to Foreigners.

Art. 5. Foreigners who possess in France establishments of industry or of commerce enjoy, for the products of their establishments, the benefit of the present law, on fulfilling the formalities that it prescribes.

Art. 6. Foreigners and French citizens whose establishments are situated outside of France have also the benefit of this law for the product of their establishments, if. in the countries where they are situated, treaties have established reciprocity for French marks. In this case the deposit of foreign marks takes place at the Registry of the Tribunal of Commerce of the department of the Seine.

Tittle III. Penalties.

Art. 7. Are punished by a fine, of from fifty francs to three thousand francs, and by an imprisonment of from three months to three years, or by one of these punishments :

1st. Those who have counterfeited a mark, or used a counterfeit mark.

2nd. Those who have fraudulently placed on their products, or the objects of their commerce, a mark belonging to another.

3rd. Those who have knowingly sold, or placed

on sale, one or more products invested with a counterfeit mark or one fraudulently affixed.

Art. 8. Are punished by a fine, of from fifty francs to two thousand francs, and by an imprisonment, of from one month to one year, or by one of these penalties:

1st. Those who, without counterfeiting a mark, have made a fraudulent imitation of it proper to deceive the buyer, or have made use of a mark fraudulently imitated;

2nd. Those who have made use of a mark, bearing indications of the kind to deceive the purchaser as to the nature of the product;

3rd. Those who have knowingly sold, or placed on sale, one or more products invested with a mark fraudulently imitated, or bearing indications of a kind to deceive the buyer as to the nature of the product.

Art. 9. Are punished by a fine, of from fifty francs to one thousand francs, and by an imprisonment of from fifteen days to six months, or by one of these penalties:

1st. Those who have not fixed upon their products a mark declared obligatory.

2nd. Those who have sold, or placed on sale, one or more products, not bearing the mark declared obligatory for that kind of products.

3rd. Those who have contravened the provisions of the decrees rendered in execution of article first of the present law.

Art. 10. The penalties established by the present law cannot be cumulated.

The greatest penalty is alone pronounced for all the acts anterior to the first process.

Art. 11. (Penalties may be doubled in case of repetition of offense.)

Art. 12. Article 463 of the Penal Code may be applied to misdemeanors under the present law.

Art. 13. (Offenders may be deprived of their rights to participate in certain elections, for a term of less than ten years.)

The court may order the posting of the judgment in places that it determines, and its insertion in full or by extracts in the newspapers that it designates; the whole at the expense of the condemned.

Art. 14. The confiscation of the products, the mark of which shall be found to be contrary to the provisions of articles 7 and 8, even in case of acquittal, can be ordered by the court, as well as the instruments and utensils which specially served for the commission of the wrong. The court may order that the confiscated products be delivered to the proprietor of the mark counterfeited or fraudulently affixed, or imitated, independently of ampler damages, if there be occasion therefor. It prescribes, in every case, the destruction of the mark found to be contrary to the provisions of articles 7 and 8.

Art. 15. (Imposition of obligatory marks must always be decreed. The court may decree the confiscation of the products in case of condemnation for same offense within five years.)

Title IV. Jurisdiction.

Art. 16. Civil actions relative to marks are brought before the civil tribunals and judged as summary matters.

In case of an action brought criminally, if the defendant raises for his defense questions relative to the ownership of the mark, the tribunal

of *Police Correctionelle* passes judgment on the question.

Articles 17 and 18. (Regulate proceedings before the courts.)

Title V. General and Transitory Arrangements.

Art. 19. (Provides that all foreign products bearing the mark or name of a manufacturer resident in France, or the name, or the place of a French factory, shall be excluded from France, or seized.)

Article 20. All the regulations of this law are applicable to wines, eau-de-vie, and other drinks, to animals, grains, flour, and generally to all agricultural products.

Articles 21, 22, and 23. (Provide for deposit of trademarks: that law shall take effect in six months: for rules of deposit and publication; and that this law shall not affect previous deposits.)

LAW OF NOVEMBER 26, 1873.

Relative to the establishment of a stamp, or special sign designed to be placed on trademarks.

Art. 1. Every proprietor of a mark of manufacture or of commerce, deposited in conformity to the law of June 23, 1857, is entitled, on his written demand, to have placed by the State, either on the paper label, band or wrapper, or on the metal label or seal, on which is shown his mark, a special printed or impressed stamp, designed to affirm the authenticity of said mark.

The stamp may be placed on a mark which forms part of the objects themselves, if the administration considers them capable of receiving it.

(The remainder of the law refers to details of its administration.)

FRENCH DECISIONS.

§ 1050. *Initials of proper names.—Requisites of mark.—Registry.*—Vignettes, containing the letters G. F., interlaced with the letter N, followed by a space for a numeral,—printed by a copper plate on slips of paper,—were pasted by both complainant and defendant on their goods. The only difference between the two marks was the letter C, placed by defendant so as to appear to form part of the letter F. Complainant had registered his mark. *Held*, that the manufacturer who adopts a mark ought to arrange it so that it cannot be confounded with that of another manufacturer who has already made use of it. This is applicable even in the case of simple letters of the alphabet, initials of manufacturer's name.

2. An imprint on paper attached to the manufactured object, may be a trademark.

3. Property in a mark is not acquired by the formality of registry. Registry is only required as a condition precedent to the action for infringement. Gurrin *v.* Forest, C. de Cass., 28 May, 1822, *Journal du Palais*, 1822, 386.

§ 1051. *Damages.*—Damages ought to be calculated according to the loss of the complainant, and not according to the profits that the infringer has

been able to make. C. de Nancy, 20 March, 1827, Germain *v.* Sevene, Sirey, 30, 1, 365. *Huard M. de Fab.* p. 47.

§ 1052. *Held*, on the contrary, that the infringers ought to restore to the complainants, whose property they have usurped, all the illegitimate benefits which they have realized by aid of their fraudulent practices; that they also ought to account for the profits which they have deprived complainants of, and to repair the wrong which they have caused by the depression of the price of the merchandise manufactured, and the rise of the price of the raw material, usual and almost necessary consequences of an unlawful rivalry; they ought also to indemnify largely complainants for all they have suffered in their credit, sacrifices of all kinds which they have been obliged to submit to, and all the expenses which they have been obliged to sustain to protect their rights. On these conditions only can the great industries which honor the country, and which have too often to fight against the culpable maneuvers of infringers, maintain and defend themselves. Tribouillet *v.* Monnier, Tr. Com. de la Seine, 8 Aug. 1857, *Huard M. de Fab* p. 48. See Blanc de la Contrefaçon, p. 682.

§ 1053. *Name as mark.—Use of name of third party.*—A. Seignette & Pontier had been for a long time in the export brandy trade at Rochelle, when a new export house was formed at Surgires (E. Seignette & Co.), which stamped its casks of brandy A. Seignette, by means of a hot iron, in precisely the same style as the old house. E. S. & Co. claimed that they were authorized by Alex. Seignette of the United States, a brother of one of the partners, to use his name. Use of the mark A. Seignette, or

any other similar mark by defendants enjoined. A commercial house can demand that another house in the same trade use a different mark from that which it has stamped for a long time on its exports. Seignette *v.* Seignette, C. de Poitiers, 12 July, 1833, *Journal du Palais*, 1833, 678.

§ 1054. *Numerals.—Infringement.—Change of mark ordered.*—The mark adopted must be so distinct from the marks of other manufacturers, that it cannot be confounded with them. When a manufacturer, adding numerals to his name, has used for a long time the mark *Dumas* 32, another manufacturer cannot, by adding numerals to the name of his partner, take the mark *Dumas* 132. There is too little difference between these two marks, to prevent their being confounded. In consequence, the use of the mark *Dumas* 132, was enjoined.

In case of unintentional resemblance between two marks, the court, although denying any damages for infringement, should always order the suppression or change of the marks to prevent future confusion. Dumas *v.* Bernard and Dumas, C. de Riom, 18 February, 1834, *Journal du Palais*, 1834, 178.

§ 1055. *Generic term.* The word ink is a generic term, which every one may make use of, but no one but the first possessor can use the words, encre de la petite virtu, (*ink of the little virtue.*) Larenaudiere *v.* Perine-Guyot, C. de Paris, July 24, 1835, *Huard M. de Fab.* p. 15.

§ 1056. *Star.* A star, printed upon a colored card, without initial letters indicative of the name of the manufacturer, or of the place of manufacture, is a good trademark. Lelarge *v.* Brossom, C. de Rouen, 30 Nov. 1840, *Journal du Palais*, 1840.

§ 1057. *Geographical name.*—A manufacturer of lime, who without being the exclusive proprietor of the quarry from which the rough material is taken, calls his products by the name of the district where the quarry is situated, cannot hinder another manufacturer of lime, who uses the same quarry, from giving his products the same name. De Lalen *v.* Grignon, C. de Cass, 24 February, 1840, *Journal du Palais*, 1840.

§ 1058. *Name.*—The merchant who sells, as coming from one manufacturer, products of another manufacturer, and who uses on his goods and labels the name of the first, renders himself liable in damages to him whose name he has usurped. The mark used was *Satin Bonjean.* This was applied to cloth for pantaloons, and was claimed by defendants to have become generic. Bonjean was the original manufacturer, the plaintiffs his successors and proprietors of the name under Law of 1824. Royer *v.* Birtiche, C. de Paris, 13 March, 1841, *Journal du Palais*, 1841.

Note. Nevertheless there are objects to which general usage has given a name, *e. g.*, lamps of the kind called *Carcel*, which are all called Carcel, although they are not made at the factory of Carcel, or his successors.

§ 1059. It is not necessary that the emblems adopted as trademarks be new; it is necessary and it is sufficient that their application be new. Robertson *v.* Langlois, Tr. Comm. de la Seine, 31 March, 1841, *Huard M. de Fab.* p. 12. *Id.* Sevin *v.* Provost, Tr. Comm. de la Seine, 14 October, 1847, *Huard M. de Fab.* 12.

§ 1060. *One's own name.*—Whenever the mark is made up of the name of the person who uses

it, others, who have the same name, have an equal right to use it; and one cannot forbid its use by the other. Mounier *v.* Jobit, C. de Bordeaux, 25 June, 1841, *Journal du Palais*, 1841.

§ 1061. *Descriptive name.*—The phrase "siccatif brillant" (brilliant dryer) although indicating a fact, is nevertheless not a necessary title to the product, and is a good mark. Aff. Raphanel Tr. de Comm. de Paris, 5 October, 1843, Gaz. des Trib. *Huard M. de Fab.* p. 15.

§ 1062. *Right lines, not a trademark.* Right lines running parallel upon the surface of a cake of soap do not constitute a commercial designation worthy of the protection of the court. Dinsilly *v.* Droux, Tr. de la Seine, 28 February, 1844, *Huard M. de Fab.* p. 19.

§ 1063. *Form of product.* The form given to a product,—*e. g.*, the form of a pipe,—is not analogous to a mark of manufacture. It is only a simple designation of merchandise protected by article 1382 of the Code Napoleon. Fiolet *v.* Duval, Tr. de Morlaix, 25 March, 1844, *Huard M. de Fab.* p. 19.

§ 1064. *Hidden mark.* The device which manufacturers of champagne place on the part of the cork inserted in the bottle is a trademark. A court cannot refuse to grant an injunction against the infringement of such a mark, because, being placed in the interior of the bottle, it is not apparent, and could not therefore serve to deceive purchasers. Min. Pub. *v.* Bernard, C. de Cass, 12 July, 1845, *Journal du Palais*, 1845, p. 655.

§ 1065. *Limitation of actions for infringement.* Infringement of a mark, or of a name, cannot be legalized by the longest use. The proprietor of a

name or a mark is always at liberty to bring his suit, when, and against whom he pleases. 24 July, 1846, Tr. d'Amiens, Rooult *v.* Audicy (Vinaigre d'Orleans), *Id.* 31 December, 1852, C. de Gunoble, Gamni *v.* Rivorri (Liqueur du la Grande Chartrum), *Id.* 2 August, 1854, C. du Paris, Chrétien *v.* Balmount (Vai du Sunel Tr.) *Huard Marque de Fab. Tr.* p. 831.

§ 1066. *Wrapper, imitation, damages.*—By the court. * * As the suit is brought by the appellant for the fraudulent imitation by Boudin of the envelopes which contain the product placed on sale; * * as the inspection, only of the seized packages and their comparison with those placed on sale by the appellant suffices to demonstrate that by the yellow color of the first wrapper, by the rose color, and by the ornaments and medals of the prospectus annexed, and by the green color of the band, in a word, by the care used in the whole disposition of the packages manufactured and sold by Boudin, to give them a resemblance to those made by Lecoq and Bargoin, Boudin has attempted to facilitate a confusion between the two, &c. Judgment for plaintiffs, damages. (Under C. C. § 1382). Lecoq and Bargoin *v.* Boudin, C. de Lyon, 15 Jan. 1851, *Journal du Palais*, 1853, vol. 2, p. 308.

§ 1067. *Seal on bottle cork, color of wax, bottle.*—A vendor of mineral water cannot close his bottles with a seal like that already adopted by a rival. In this case he was enjoined not only from using the seal, but also the same colored wax. The court refused an order for a change in the peculiar form of bottle, since that was in general use. André *v.* Budoit, C. de Lyon, August 21, 1851, *Journal du Palais*, 1851, 2, 643.

§ 1068. *Naming an invention.—Gazogène.—Infringement.* The name given by a manufacturer to an apparatus of his invention, belongs to him as a mark of his goods, and the sign of his trade, so that no other can employ the same title to distinguish like products. The word *gazogène* belongs to the one who first applied it to an apparatus for instantly making *seltzer water*, although this name was already employed to designate an apparatus for producing illuminating gas. In effect it is not a generic name, when it is applied to an apparatus having a different use. Riche *v.* Briet, C. de Paris, 19 January, 1852, *Journal du Palais*, 1852, 1, 196.

§ 1069. *Form.* To the first user belongs the special form given to a product, if the form is not required by the nature of the object. Aubineau *v.* Gillemont, Tr. Comm. de la Seine, 17 Feb. 1852, *Huard M. de Fab.* 18. See § 1078.

§ 1070. *Marks not attached.—Infringement.*—There is no infringement when the marks have been made separate from the goods, and never placed thereon. Aff. Barbeir, C. de Paris, 18 Febuary, 1852, *Dulloz*, 1852, 1, 269.

§ 1071. *Eau de Botot.—Name in common use.—Form of bottles.—Infringement.*—When a liquid known by the name of its inventor, has entered into common use, the impression of its title on the body of the bottles intended to contain it, is not a mark of manufacture susceptible of exclusive property.

Impressing a mark on empty bottles does not constitute a punishable act. Barbier *v.* Bouman, C. de Cass, 9 July, 1852, *Journal du Palais*, 1852, 1, 413.*

* Changed by law of 1857. See § 1185.

§ 1072. *Vignette.—Public buildings.*—The vignette adopted by a manufacturer to distinguish his productions, and which he places upon the boxes and wrappers in which they are shipped, constitutes his trademark, even though the vignette represents a public establishment belonging to the State, which had previously been placed on a scientific publication. (A work of art distinguished from a mere print used to designate a certain thing.) Ben *v.* Larband, C. de Riom, 23 Nov. 1852, *Journal du Palais*, 1853, 1, 244.

§ 1073. *Generic name.—Vineyard proprietors.*—The use by a merchant in his marks and labels of a generic name, previously used by another, does not render him liable to a suit for damages by the latter, especially if he has introduced in his name and the vignettes accompanying it, such changes as to avoid all confusion.

BY THE COURT. As the plaintiffs have not chosen for the essential features of their mark, a proper name susceptible by itself of being property; as they have not adopted a fancy name, which by a species of first occupation they had a right to claim as their exclusive property; as the title under which they export their product—*Les proprietaires de vignobles*, in English, *Vineyard proprietors*, is a generic term, belonging to an indefinite number of proprietors; as the term is similar to a name belonging to several persons, of which the law has never enjoined the use by the owner, even though a person of the same name has adopted it for a mark of his products, * * judgment for defendant, &c.

Salignac & Co., had obtained an injunction in England. They were required by this judgment to

have it dissolved. Salignac *v.* Savanier, C. de Bordeaux, 19 April, 1853, *Journal du Palais*, 1854, 1, p. 129.

§ 1074. *Generic name.—Au petit pot.*—Although a product has been sold from time immemorial in a little pot (*un petit pot*), the words "at the little pot" (au petit pot), do not constitute on that account a generic name, and the one who first adopted it has an incontestable right to the exclusive use. Ruffy *v.* Gérard, Trib. de Comm. de la Seine, 8 February, 1854, *Huard Marque de Fab.* 15.

§ 1075. *Title of inventor.*—No one but the true inventor has the right to describe himself as the inventor of a patented article, even though the patent shall have expired and fallen into public use. Therefore the patentee,—and after his decease his son as heir,—has an action to prevent such usurpation, and for damages. (Defendant falsely described himself as "Inventor of apparatus called distillatory kitchens.") Peyre Sons *v.* Rocher, C. de Rennes, 12 March, 1855, 1 *Ann. de la Pro.* 183.

§ 1076. *Fancy name.—Label of champagne wines.* Thomas used for two years a label on champagne sold by him containing the words, "Marquis de Lorme, Sillery mousseux," a fancy name. Lorvie used same words on champagne, contending on trial that they were fictitious, and indicated neither the maker, or place of manufacture, and no rights passed to the plaintiff. It does not appear that remainder of label was imitated.

Held, that although the use of an anonymous name as above might lead to abuses, yet rivals in business could not take the mark of a merchant or

manufacturer, and deprive him of his customers by a confusion impossible to be avoided. Decree for injunction, destruction of mark on boxes and bottles of wine belonging to defendant, and damages. C. de Paris, 5 November, 1855, Thomas *v.* Lovie, 1 *Ann. de la Pro.* 222.

§ 1077. *Infringement of name.—Acquiescence.—Initials.—Façon de.*—The name of a manufacturer or merchant is property; therefore a manufacturer cannot use on his wrappers and bills the name of another manufacturer, even by putting before it the word *façon* (style), unless it is proved that by long usage and by the tacit or express consent of the interested person, the name has become the usual title of the article, serving to indicate in commerce a certain kind of manufacture. If in the latter case, it is exceptionally permitted to those not owners of the name to use it, it is on the condition that it be used in a manner avoiding confusion between the products of different manufacturers.

2. A manufacturer may take for his trademark the initial letters of his name; but in that case he cannot stop the use of the same letters in a different order. Thus the manufacturer who has taken for his trademark S. T. cannot object to another using the letters T. S., although there results an easy confusion between the two establishments. Bricard *v.* Teissier, C. de Cass, 24 Dec. 1855, 2 *Ann. de la Pro.* 18.

§ 1078. *Emblems.—Form of product.—Infringement.*—Plaintiffs were manufacturers of solid laundry bluing in cakes in the form of sad-irons, with the raised figures of women on one side in the act of ironing, and on the other, of washing or placing clothes on lines to dry. Regular deposit was made

of their mark. Defendants made their bluing also in the form of sad-irons with the figure of a woman on one side in the act of washing or ironing.

Held, in the lower court, that since there was only a resemblance in *form* and in the *figures* between the two products, and it was not easy for any one to be deceived, because each bore the name of the manufacturer, and the boxes which enclosed the cakes were not alike in color or inscription, and there was rather a resemblance than servile imitation, plaintiffs had no right of action. On appeal judgment was reversed, it being held that defendants had infringed the marks and emblems adopted by plaintiffs; that the circumstance that the bluing of defendants bore his name was unimportant, as the difference in name did not justify the usurpation of a mark which most generally guides the purchaser. Damages. Boilley *v.* Jollivet, C. de Lyon, 14 May, 1857, 3 *Ann. de la Pro.* 253.*

§ 1079. *French citizen and foreigner.—Infringement of trademark.*—The French courts have jurisdiction of an action for unlawful rivalry brought by a French citizen against a stranger, even though the act took place in a foreign country. Bloc *v.* Hinks-Wils, C. de Paris, 25 Jan. 1856, 2 *Ann. de la Pro.* 57.

* The French editor in a note says, that the court appears to have decided that a special form of a product could become a trademark. But he thinks the imitation of the form of a product is only an unlawful rivalry in trade (under C. C. 1382), and the same cannot be a trademark. Held, that the square form of a bottle was not an invention of the plaintiff, and by itself did not constitute a trademark, serving to designate the origin and identity of his product. Tissier *v.* Lecampion, C. de Paris, 8 Nov. 1855, 1 *Ann. de la Pro.* 190.

§ 1080. *Signs.—Unlawful rivalry.—Ficticious partnership.—Maison de la Mère Moreaux.*—Mr. and Mrs. Moreaux carried on a liquor store at place de l'Ecôle No. 4, Paris, known as *Maison Moreaux or Maison de la Mère Moreaux*, from 1822 to 1846, when they sold it to Mr. and Mrs. Lessure. In 1852, Mr. Lessure died, and some time afterwards his widow (the establishment having been managed by her brother) sold it to Robineau, the plaintiff. The brother formed a partnership with Duriot, his co-defendant, giving to it his trade of "liquoriste." Shortly after, they put on their shop front, and on their labels and manufactures, "*Moreaux, fils de la Mère Moreaux, et Duriot.*" The Tribunal of Commerce held Moreaux had a right to use his own name, but not to add it to anything to lessen the rights of Robineau, and directed the words "de la Mére Moreaux" to be erased from defendants' signs, &c.

On appeal by Robineau it was contended for him that the partnership of Duriot & Moreaux fils was fictitious. By defendants, that there was no fraud; that Moreaux fils had been engaged all his life in the manufacture of liquors, and had only used his right, in associating himself with Duriot, to bring to the partnership his name and trade. He had no part in the sale to Robineau, and was not personally bound by any guaranty to him. Held, that when a person bearing the name of a commercial house associates himself with a rival house, and it appears from the circumstances of the case, and especially from the stipulations of the agreement, that the partnership is only a fraudulent means invented with a view to establish

a confusion between the two houses, the court can order the suppression of the name of the pretended partner, although, being son of the founder of the first house, he had personally continued in the exercise of the same kind of industry. Robineau *v.* Duriot, C. de Paris, 28 Jan. 1856, 2 *A. n. de la Pro.* 54.

§ 1081. *Firm name.—Similarity of names and title.—Concurrence dèloyale.*— Where a partnership has introduced into its firm name, even in the second place, the name of another partnership, —*e. g.*, Richer et Cie., in Huguin, Richer et Cie., and the addition was made with the end of making a *concurrence dèloyal* (unlawful rivalry), the courts may order the suppression of the name of the partner which causes confusion between the two firms. (Richer was taken into the business that his name might be used.)

2. The inventor who has sold to an associate the property and exclusive use of patented apparatus to which he has given his name can afterwards neither use the same apparatus nor give anew his name to apparatus, even different, which he uses in the same trade. Richer & Co. *v* Huguin, Richer & Co., Trib. de Comm. de la Seine, 5 Mar. 1856, 2 *Ann. de la Pro.* 126.

§ 1082. *Infringement of name and trademark.—Foreigners.*—A stranger not domiciled in France has no right of action to enjoin the use of his name or trademark.

But a Frenchman who proves himself the owner of a name and trademark, legally registered in France, has an action to enjoin not only the use of such name and trademark, but also the imita-

tions of it which may cause confusion.* Farina *v.* Camus, Trib. de Comm. de la Seine, 24 Mar. 1856, 2 *Ann. de la Pro.* 159.

§ 1083. *Wrappers.—Like form, color and size.*—Plaintiff sold chemical paper enclosed in a maroon colored pasteboard roll. This roll had been deposited with the Register of the Tribunal of Commerce. Defendants put up and sold the same paper in pasteboard rolls of the same form, size, and color. Held, that these circumstances were sufficient to cause a confusion between the goods of the two parties. An injunction was granted. Damages. Poupier *v.* Laurençon, Trib. de Comm. de la Seine, 4 Apl. 1856, 2 *Ann. de la Pro.* 363. See § 1085.

§ 1034. *Announcement as "successor."*—The purchaser of the stock and good will of a firm, of which he was a member, has a right to announce himself under the name of the former firm, adding that he is successor. Biétry *v.* Marcel, C. de Paris, 28 June, 1856, 2 *Ann. de la Pro.* 252.

§ 1085. *Wrappers.—Similarity of form, color, &c.*—G., a biscuit manufacturer, deposited according to law, four packages of biscuit, wrapped in white paper, "glacé," with a label, "At the Biscuits of the Crown," printed in gold, and designs of medals at each corner, the French arms in the center, and at the two ends an escutcheon with the words "a la vanille" (vanilla). R., a biscuit manufacturer, also wrapped his biscuits in white paper, "glacé," with a label printed in gold, and a vignette bearing medals at each angle. At the center appeared the

* By treaty Americans now have the same right of action in France as Frenchmen have in America.—*Treaty of* 1869.

French arms, and at the corners escutcheons with the words "Glacés à la vanille."

Held, that R. had made the wrappers of his biscuits, as well in form as in color and dimensions, in a manner to establish as true a resemblance as possible with the wrappers of G., and to cause confusion with the products of that house, and should be enjoined. Damages awarded. Guillout *v.* Richard, C. de Paris, 10 Dec. 1856, 3 *Ann. de la Pro.* 123.

§ 1086. *Rivalry.—Employee and employer.*—M. & P., photographers, established at No. 3 B. de Capucins, employed H. and V. The latter afterwards established themselves at No. 11 same street, with a sign reading "Herlich, Vust & Co. in this house, ex-artists of the house Mayer and Pierson, where they had the honor to paint the photographic portraits of their Majesties the Emperor and Empress, as well as of the principal dignitaries of the Crown, the King of Wurtemburg and of Portugal, Abd-el-Kader, &c." On suit brought, H. & V. voluntarily omitted the words "ex-artists of the house Mayer & Pierson," retaining the remainder. They contended that the artist added by painting, to the stiff photographs previously taken, and that they had performed this work for M. & P. That they had a right to say so, because they had always retained possession of their artistic talent, and therefore they could claim the authorship of the portraits which they had painted in the workshop of their old employers.

Held, that H. & V. could not use the name of their old employers. Also that no employee or artist working on account of a commercial house, can claim the right to preserve his individuality in the work on which he has been engaged. Also, that

H. & V. should pay damages and costs. Mayer *v.* Herlich, Trib. de Comm. de la Seine, 23 Jan. 1857, 3 *Ann. de la Pro.* 63.

§ 1087. *Industrial name.*—D. formed a company with title "*Caisse des reports.*" V. & Co. adopted same name in addition to their own name previously used. On objection being made, they changed it to "*Caisse general de reports,*" which could mislead the public into believing that D's place was but a branch of V's. *Held*, that there is an infringement of a trade name when that which is taken by the rival can lead to confusion between the two establishments, although one may not be literally the reproduction of the other. Damages not withheld when change has been tardily made. D'Inville *v.* Vergniolles, C. de Paris, 6 Feby. 1857, 3 *Ann. de la Pro.* 202.

§ 1088. *Fancy name.—Paper Job.*—Jean Bardou, a manufacturer of cigarette paper, marked them with his initials J. B., which he separated by a lozenge, so that the mark appeared to be the word "Job." The public called for Job paper. L., another manufacturer of cigarette paper, associated with himself one Job and took the mark "Job," saying, that as his partner was named Job, he had a better right to use the mark than Bardou, who had only acquired it by the error of the public. (B. had previously (1852) brought suit against L. in the police court, for counterfeiting his trademark, and obtained judgment, that he (B.) was entitled to the word "Job," as his trademark.) Held, that L. & J. should be restrained from using the word "Job." Damages. Bardou *v.* Lassausée, Trib. de Comm. de la Seine, 26 Feby. 1857, 3 *Ann. de la Pro.* 125.

§ 1089. *Sign.—Rights of successors.*—The merchant who, in selling his stock in trade, gives to the buyer the right to use his name and title as *successor*, can stop the purchaser from using on his sign, advertisements and manufactures, his (the seller's) name alone, without adding his (the purchaser's) own name and his position as successor. Bautain *v.* Mercklein, C. de Paris, 21 March, 1857, 3 *Ann. de la Pro.* 207.

§ 1090. *Like names.—Signs.—Unlawful rivalry.*—Pinaud & Amour were hatters at No. 87 Rue Richelieu, under style *Maison Pinaud.* René Pineau afterward established himself in same business at No. 91, under title *Maison Pineau.* He used on the lining of his hats a servile imitation of the escutcheon of P. & A. and every endeavor to turn to his profit their trade.

Held, that although Pineau had the right to use his own name on his shop, he should suppress the word *Maison;* that he should change the escutcheon on the lining of his hats; that he should add to his name Pineau his given name René; and that these two names should be placed on his shop, his bill-heads and commercial letters in the same line and like characters. Pinaud *v.* Pineau, Trib. de Comm. de la Seine, 28 May, 1857, 4 *Ann. de la Pro.* 86.

§ 1091. *Generic name.—Toile ménage* (*household cloth*) is not a fancy name which can become the property of a single manufacturer, it having been used for many years by various manufacturers of Alsace. Both parties embroidered the words *toile ménage* in red letters on their goods, but used other marks to indicate their manufacture. Held, no infringement. Rian *v.* Bernheim, C. de Colmar, 16 June, 1857, 4 *Ann. de la Pro.* 216.

§ 1092. *Business signs.—Pharmacie Centrale de France.*—Plaintiffs were proprietors of a pharmacy, and were the first to use the sign *Pharmacie Centrale de France.* Defendants afterwards called theirs *Pharmacie Rationale Centrale de France.* They were enjoined the use of the words *Centrale de France.* Damages. Dorvault *v.* Hureaux, Trib. de Comm. de la Seine, 24 July, 1857, 4 *Ann. de la Pro.* 125.

§ 1093. *Labels.—Title of products.—Café des Gourmets.—Infringement.*—When a manufacturer has adopted for his products a special title—as *Café des Gourmets* (the gourmand's coffee)—and legally deposited his labels, another who imitates not only the shape of the boxes and labels of the first, but also uses the phrase *Aux Vrais Gourmets* (true gourmands), instead of *Café des Gourmets*, is guilty of unlawful rivalry and should be enjoined and adjudged to pay damages. Guérineau *v.* Argant, Trib. Civ. de la Seine, 13 Aug. 1857, 4 *Ann. de la Pro.* 155.

§ 1094. *Same trademark as* § 1093.—Defendants in this case substituted the words *Café des Connoisseurs* for *Café des Gourmets*, imitating, however, the arrangement and text of the label of the plaintiffs, excepting the name and place of manufacture. The same was printed in blue instead of black. Held, there was an infringement of trademark under law of 1857. Guérineau *v.* Mignon, Trib. Corr. de la Seine, 27 January, 1858, 4 *Ann. de la Pro.* 157.

§ 1095. *Labels.—Circulars.—London Dispensary.*—The use on circulars and labels of the title *London Dispensary, and Pharmacie de l'Ambassade d'Angleterre* (Pharmacy of the English Em-

bassy), which had been previously used by an English pharmaceutist at Paris, is an act of unlawful rivalry in business, and subjects the offender to an action for damages and injunction (Civil Code, § 1382). Schorthose *v.* Hogg, Trib. de Comm. de la Seine, 25 March, 1858, 4 *Ann. de la Pro.* 225.

§ 1096. *Figure of woman representing "Pharmacy."*—When a pharmaceutist has adopted for his products a label showing a woman representing Pharmacy, having one hand on a book, as a symbol of science, and in the other a caduceus; another pharmaceutist is liable for infringement and unlawful rivalry who uses a label on which he reproduces the same figure in similar framework, even though he uses different details,(*e. g.*, different arrangement of the accessories to the figure of the woman,)and the names of the two houses be given. Dorvault *v.* Teissier, C. de Paris, 28 April, 1858, 4 *Ann. de la Pro.* 298.

§ 1097. *Names and labels.—Form of bottles.*—Although the manufacture of *l'eau de Botot* (Botot water) has become public, manufacturers of that *water* are not allowed to use the same form of bottles and seals as the successors of Botot, the original proprietors of the water, nor to sell their products as *veritable eau de Botot* (pure Botot water). Barbier *v.* Simon, Trib. de Comm. de la Seine, 8 April, 1858, 4 *Ann. de la Pro.* 191; affirmed on appeal, 5 *Id.* 366.

2. To same effect, case on Elixir Raspail. Combier-Destre *v.* Maller-Laudas, Trib. de Comm. de la Seine, 13 August, 1857, 3 *Ann. de la Pro.* 351.

§ 1098. *Generic name.—Benzine parfumé.*—When the word used to qualify a product is generic, as *perfumed* applied to benzine, *benzine par-*

fumé (perfumed benzine), no one can claim exclusive property in such word. Thibierge *v.* Dupont, Trib. de Comm. de la Seine, 6 August, 1858, 4 *Ann. de la Pro.* 400.

§ 1099. *Geographical Name.*—Admitting that the name of a place of manufacture, under law of 1857, may become a trademark, it is only so when it is used in a special form.

2. There is neither infringement of a trademark, nor unlawful rivalry in putting on tiles the words près Massy (near Massy), although another manufacturer had previously adopted as a trademark the word *Massy*, if in practice the title, Carreaux de Massy (tiles of Massy), is applied to tiles manufactured in the neighborhood, as well as in *Massy* itself. Bisson-Aragon *v.* Aragon, C. de Paris, 3 June, 1859, 5 *Ann. de la Pro.* 216

§ 1100. *Geographical Name.—Vallée d' Aure.*—The name of a place cannot become the property of one who has chosen to make it his trademark, except when the place itself is his private property. In consequence the other producers of the same country may use the same name. It is even so in case the title, though known previously, had acquired celebrity in commerce, by the use of him who introduced it into his mark. There is no unlawful rivalry, in employing for similar products, the same name of place, and receptacles of the same form and size, when they are distinguished by the name or special mark of the maker. Neither plaintiffs nor defendants did business in the valley (*Aure*), whose name they used, but placed its name on butter shipped by them to Brazil. No regard was had to the origin of the butter. Levigoureux *v.* Lecomte, Trib. Civ. de Havre, 3 June, 1859, 5

Ann. de la Pro. 279. See also Duru *v.* Pinet, C. de Grenoble, 11 February, 1870, 16 *Ann. de la Pro.* 355.*

§ 1101. *Pseudonyme.*—The author or artist who makes himself known under a pseudonyme becomes the owner of the name, and can prevent the use of the same by another in trade, should he himself engage in trade. Tournachon *v.* Tournachon, C. de Cass, 6 June, 1859, 5 *Ann. de la Pro.* 214.

§ 1102. *Labels.*—Labels composed and sold by a lithographer are not his trademarks. They can only be protected as artistic designs under the law in relation to designs.

BY THE COURT.—The trademark regulated by the law of June 25, 1857, is the characteristic sign by which the manufacturer distinguishes the product of his factory, or the merchant, the object of his trade; it is not itself, and cannot become, a product of manufacture or an object of trade. By the use that a merchant may make of a label in applying it to a receptacle containing a product of his manufacture, it is possible that the label may become for him a trademark. It will be for him a distinctive sign or seal of his product without being the subject of his trade; whereas, so far as the plaintiffs are concerned, these labels can never be other than the products themselves of their manufacture, and the special object of their industry. Lalande *v.*

* 1. It was held under law of 1824, that a manufacturer who affixed to his goods the name of a place other than that of his factory, was liable to an action by a manufacturer of the same kind of goods in the place whose name had been adopted. Blaise *v.* Pitet, C. de Paris, 12 August, 1864, 11 *Id.* 38.

2. If the name belongs to a private domain, it is protected. (Grande Chartreuse.)

Appel, C. de Paris, 7 June, 1859, 5 *Ann. de la Pro.* 248.

§ 1103. *Name.—Vinaigre de Bully.*—When a manufacturer has given his name to a special product of his manufacture (*e. g.*, Bully, his name, to vinegar, thus, *vinaigre de Bully*), no one can employ the same name to indicate similar products to the detriment of the former or his successor. Lemercier *v.* Millin, Trib. Comm. de la Seine, 1 July, 1859, 5 *Ann. de la Pro.* 360.

§ 1104. *Fancy Name.—Poudre brésilienne.—Infringement. Poudre brésilienne*, a name given to a powder for destroying insects, is a good trademark.

2. Defendant is guilty of an infringement of the trademark, if he use it on packages of his own, although the powder contained therein may be that manufactured by the owner of the mark, Gourbeyre *v.* Bodevin, C. de Paris, 9 July, 1859, 5 *Ann. de la Pro.* 250.

§ 1105. *Signs.*—Every merchant who has a sign has a right to oppose the adoption by a rival of a sign which can cause confusion with his own, even though the rival was the first in the particular line of business. Sign and name *Sultan* were used first, *Au Grand Sultan* last. The latter was ordered to be taken down because there was not sufficient difference between the two. Ben-Sadoun *v.* Nessim-Dahan, Trib. de Comm. de la Seine, 7 September, 1859, 5 *Ann. de la Pro.* 419.

§ 1106. *Misrepresentation.*—Article VIII. of the law of 1857, which punishes the use of a mark designed to deceive the purchaser in reference to the nature of the product, is not applicable to a notice placed on a kind of food for fowls, indi-

cating a greater quantity of phosphate than that which it really contains. Min. Public *v.* Heuzé, C. de Cass, 30 Dec. 1859, 18 *Ann. de la Pro.* 186.

§ 1108. *Secret remedy.—Name of inventor.—Rob dépuratif de Boyveau-Laffecteur.*—Defendants used the name of the remedy sold by plaintiff, but added the words in italics, "rob végétal dépuratif, *formule* de Boyveau-Laffecteur." The remedy itself had become public property. *Held*, that when the manufacture and sale of an article has become public property, any one may advertise and sell the same by the name which the inventor gave to it, and by which it is usually known.

2. This principle applies also to the name of the inventor, if his name has become by his own action a necessary element in the title of the product; but his name may only be used as a simple designation of the thing, and not in such a manner as to lead the public into error as to the individuality of the manufacture and the source of the product.

3. A secret remedy especially, which has become public, may be advertised and sold by any one under the name of the inventor, preceded by the words, *selon la formule de . . .* if the inventor himself gave his name to it,—it being understood always, that the advertisement and labels are so arranged as not to create a false impression as to the manufacturer. Giraudeau de Saint-Gervais *v.* Charpentier, C. de Cass, 31 January, 1860, 6 *Ann. de la Pro.* 100.

§ 1109. *Imitation of bottles, wrappers and labels.*—Defendant, manufacturer of ferruginous pills, imitated the form and color of the bottles,

and the wrappers and labels of plaintiff, manufacturer of a similar article, but changed the form of the bottles slightly, and the title as shown by the italicized words "Unalterable carbonate of iron pills *according to the formula* of Vallet, approved by the Academy of Medicine." *Held*, that defendant had a culpable intention to imitate the mark of plaintiff in such a manner as to deceive the public, and cause a confusion in their mind between the true product sold by plaintiffs and the false. Frère et Vallet *v.* Mauchien, Trib. Corr. de la Seine, 15 February, 1860, 6 *Ann. de la Pro.* 113.

§ 1110. *Initials.*—Plaintiff, a manufacturer of velvet, was the owner of a trademark, representing two fames, one blowing a trumpet, the other supporting a crown of flowers, in which were placed the initials J. B. D. Defendant, also a manufacturer of velvet, used as a trademark an anchor, surmounted by a star; below the anchor were traced the initials J. B. D. Held no infringement. David *v.* Brossier, C. de Lyon, 20 Nov. 1860, 7 *Ann. de la Pro.* 119.

§ 1111.—*Similarity of names. — Analogous trades.*—Whenever there is a similarity between the surname and Christian name of two rival traders, the one who has been the longest established has the right to demand that the new-comer take such measures as are necessary to prevent confusion between their establishments. For this purpose the new-comer may be required to suppress his Christian name on his signs, bill-heads and labels, and add to his name a distinguishing qualification. Laurens *v.* Laurens, Trib. de Conn. de Marseille, 11 April, 1861, 7 *Ann. de la Pro.* 221.

§ 1112. *Infringement.*—When there exists in the vignettes and names or titles used, sufficient differences to prevent confusion between the different products, there is not a fraudulent imitation of marks in the sense of the law of 1857. Claye *v.* Célard, C. de Lyon, 27 Nov. 1861, 8 *Ann. de la Pro.* 259.

§ 1113. *Joint trademark between manufacturers of same place.*—Manufacturers of a city or locality may agree upon a common mark for their products. In such case, those of the manufacturers who have regularly deposited this common mark, have an action against the manufacturers of another locality who have adopted a mark likely to cause confusion between the products of the two places.

2. A border composed of four rose-colored threads running from one end to the other of cloth, indicating that it was manufactured in a certain locality, is a trademark, and it is an infringement to adopt for the same kind of cloth a like arrangement of threads, although the threads be red instead of rose-colored. Ricque *v.* Forges, C. de Paris, 28 Nov. 1861, 8 *Ann. de la Pro.* 25.

§ 1114. *Mark in common use.*—Although the deposit of a trademark establishes a presumption of property in him who has made the deposit, this presumption may be destroyed by proof tending to show that the mark was in common use previous to the deposit.

2. A manufacturer cannot appropriate in a specific industry, by deposit, a mark in general use. Somborn *v.* Menser, C. de Metz, 31 Dec. 1861, 8 *Ann. de la Pro.* 78.

§ 1115. *Fancy name.—Liqueur du Mont Carmel.*—BY THE COURT.—Because Faivre deposited

before the defendants, at the office of the secretary of the tribunal of commerce, under the law of 1857, a bottle containing a liquor with the name *Liqueur de Mont Carmel;* and by means of this deposit acquired an exclusive title to this name as a mark of manufacture; and because the name *Mount Carmel* is not a generic name belonging to commerce, but a fancy name drawn from an imaginary province; and Duquaire & Fussy have infringed the mark of manufacture of Faivre by making or selling a liquor under the same name, &c. Damages adjudged. Faivre *v.* Duquaire, Trib. Civ. de la Seine, 18 Mar. 1862, 8 *Ann. de la Pro.* 238.

§ 1116. *Fancy name.—Translation.—Eau écarlate.*—When a manufacturer has given a fancy name to a well-known product, that name belongs to him, and he has an action against those who use either the name adopted, or the translation of it into a foreign language. (*Eau écarlate* was translated into *scarlet water*, and the translation used.) Burdel *v.* Jozeau, Trib. de Comm. de la Seine, 30 May, 1862, 8 *Ann. de la Pro.* 239.

§ 1117. *Imitation.—Papier Job.—Priority of use.*—Although the manufacturer who is sued for the infringement of a mark may prove that it was used previously to the deposit, the owner of the mark may show in opposition that his possession commenced before the use proved.

2. That there be the offense of fraudulently imitating a mark under article 8 of law of 1857, it is not necessary that the imitation be servile; it is sufficicient if it is of the kind to deceive the ordinary buyer. In consequence, the dissimilarities which escape the examination, necessarily superficial, of buyers—such as the name of the manufacturer, or a

notice stating that his products must not be confounded with those of another manufacturer—cannot be invoked as a defense. Bardou *v.* Blanchard, C. de Montpellier, 27 June, 1862, 8 *Ann. de la Pro.* 273.

§ 1118. *Like names.*—If, in principle, every one has the right to carry on any trade he desires under his own name, it is on the condition that he use it so as to avoid all confusion with a house previously existing.

In such case, the court should order the necessary measures to avoid confusion.

(In this case, John Arthur was the first to establish an agency of information for strangers, &c. William Arthur & Co. set up a similar agency. They were required to add to their name, "*House founded in* 1860.") Arthur *v.* Arthur, C. de Paris, 3 May, 1862, 8 *Ann. de la Pro.* 204. To same effect Carnidade *v.* Carnidade, C. de Bordeaux, 16 Aug. 1865, 13 *Ann. de la Pro.* 268.

§ 1119. *Like name of Company.*—The *Lloyd français* was a company of marine assurance, bearing a good reputation. A new company was founded for the same purpose under the name of *Lloyd Central.* Use of name *Lloyd Central* was enjoined. Lloyd Français *v.* Lloyd Central, Trib. de Comm. de la Seine, 7 July, 1862, 8 *Ann. de la Pro.* 412.

§ 1120. *Papier de riz & Papier crème de riz.*—BY THE COURT.—Considering that the manufacture of rice paper (*papier de riz*) is open to the public; that the mark of Prudhon, "60 feuilles de papier crème de riz, système Prudhon et Ce. à Paris; ne pas confondre avec le papier de riz," cannot be regarded as reproducing the mark of Abadie, which

reads as follows: "Papier de riz, formát français. Nouvelle fabrication spéciale. Abadie et Ce, fabricants brevetés s. g. d. g., á Paris. Finesse, solidité douceur."; that the book of Prudhon is rolled and composed of a continuous sheet, which, in unwinding presents a succession of little leaves for enclosing tobacco, having a different appearance from the books of Abadie, which fold flat, and the leaves of which form a little volume; that these differences leave without importance, the only point of resemblance, which exists between the two products, *i. e.*, the salmon color of the wrapper, which cannot be claimed by Abadie. Complaint dismissed—there being neither a violation of law of 1857 or of article 1382 Code Civil—overruling the court below, which held, that "if the use of salmon-colored paper is general and common for enveloping all kinds of products, its use, joined to the words *crème de riz*, reveals an intentional imitation susceptible of creating a confusion with the products of the plaintiff." Abadie *v.* Prudhon, C. de Paris, 8 July, 1862, 8 *Ann. de la Pro.* 263.

§ 1121. *Name of product.—Eau de la Floride and Eau de la Fluoride.*—Plaintiffs deposited the name *Eau de la Floride* as their trademark for a hair dye. Defendants called their dye by the name *Eau de la Fluoride.* In the court of first instance defendant was enjoined the use of the word Floride, or Fluoride. On appeal by defendant, it was contended that plaintiffs represented their dye as a natural water imported from Florida (Floride), whereas, defendant only offered his as a chemical composition of *fluor* with nitrate of lead or silver, from which it derived its name of *Fluoride;* that this chemical term designated the combination of

fluor with less electro-negative bodies. And further, he pretended to have always taken care that there be marked differences between his bottles, labels, prospectuses, advertisements, and prices, and those of plaintiffs. Decree affirmed. Guislain *v.* Labrugnère, C. de Paris, 15 Nov. 1862, 9 *Ann. de la Pro.* 40.

§ 1122. *Pupil.—Name of Patron.*—An apprentice or workman cannot announce himself as a pupil of his former employer, on establishing a business for himself, without the employer's consent. Rommetin *v.* Cretté, C. de Paris, 4 March, 1863, 9 *Ann. de la Pro.* 173. See § 1125.

§ 1123. *Geographical Name.*—A manufacturer who places on his products the name used by another, does not infringe his trademark (Law of 1857), if the name is that of the place where the products are made. The name of a hamlet, situated in the township where the different industries are established, may be taken as the place of manufacture, even though the first person to introduce the product gave the name to the hamlet. Désiré Michel *v.* Achard, C. de Cass, 15 July, 1863, 9 *Ann. de la Pro.* 328. See to same effect, §§ 1099, 1100.*

§ 1124. *Fancy Name. — When Use of True Name Modified.*—The manufacturer who takes for his trademark a name other than his own, can object to the use of the same name, by a manufacturer of a similar article, with such surroundings as to cause confusion. (Plaintiff took as his trademark the word *Joly*, surrounded by an oval. De-

* *Contra*, if the name belongs to a private domain (Grande Chartreuse), §1219, or if it is a fancy name (Mont Carmel), § 1115.

fendant, whose name was Joly, imitated plaintiff's mark.)

2. In such case, the court should order such modifications as it thinks necessary to hinder the confusion produced; especially compelling the last-comer to change his mark, either by adding his given name or by changing the form and dimensions of its surroundings. Massez *v.* Joly, C. de Paris, 20 August, 1863, 10 *Ann. de la Pro.* 318.

§ 1125. *Pupil.—Name.*—A purchaser of a business may bring an action to restrain the former pupils or employees from calling themselves such on their signs or manufactures, and this, although the former head of the establishment authorized them to do so after the sale. Dubois *v.* Demoiselles Louise & Lucile, Trib. de Comm. de la Seine, 27 October, 1863, 10 *Ann. de la Pro.* 187. See § 1122.

§ 1126. *Proper Name.—Name of product. —Elixir et liqueur Raspail.*—Plaintiffs (Raspail & Sons,) brought suit against defendants, manufacturers of a hygienic liquor, invented by Raspail, Sr., to restrain the use on their labels, advertisements and prospectuses, of the name *Liqueur ou Elixir Raspail* (Liquor or Elixir Raspail), &c., also for damages. *Held*, that as Raspail had for a long time authorized the use of his name on the bottles in which the distillers sell the product, known as *Liqueur ou Elixir Raspail*, and had allowed the receipt for the liquor of which he was the inventor, to become public property, and had by that means authorized the manufacture of the liquor, in which he had not reserved an exclusive property, it followed that he had permitted the use of his name,—by which alone the manufacturers could make it known to the public,—and no cause of

action was shown. On *appeal* it was held, that as the liquor of which Raspail had published his formula in the *Manuel Annuaire de Santé*, was known to the public under the name *Liqueur ou Elixir Raspail;* that as Raspail only published his formula, and did not give his name to the public, and the name was an imprescriptible property, Raspail had the right to limit his license in its use, and in default of his continued consent, the use which defendants had made of his name had been without right. Judgment reversed. Raspail *v.* Combier-Destre, C. de Paris, 9 November, 1863, 9 *Ann. de la Pro.* 377.

§ 1127. *Natural product.—Fancy name.—Luciline.—Evidence.*—A fancy name, such as *luciline*, used to designate an essentially natural product, (refined petroleum) is the property of him who first makes use of it, and should be protected as a trademark when its legal deposit has been made.

2. The burden of proof is on the party who pretends that the name has gone into public use. Cohen *v.* Maris, C. de Paris, 28 November, 1863, 10 *Ann. de la Pro.* 105. See § 1114.

§ 1128. *Generic name.—Foreign language.—Peppermint-London. — Misrepresentation.* — The one who, in depositing his trademark, gives to the product the usual name which it bears in common language, without a special title or the addition of a distinctive sign, cannot claim property in the name,—*e. g.*, Peppermint-London.

2. It is so, although the name is translated into a foreign language.

3. If there has been added to the common name the false name of a foreign place of manufacture, there is deceit in the nature of the thing sold, which

deprives the author of the falsehood of his right of action for infringement. Mauprivez *v.* Bouchet, C. de Paris, 26 February, 1864, 10 *Ann. de la Pro.* 320.

§ 1129. *Deposit of mark.— Abandonment.— Use.*—The deposit required by article 2 of law of 1857, is a prerequisite to a suit for infringement of a trademark, but it does not create property in the mark. Therefore, it belongs to the judges of the fact, to decide, in case of a contest on this point, whether the one who made the deposit had either himself, or by others, the exclusive property in the mark, or whether it had in whole or in part fallen into public use.

2. Although the usurpation of the name of a manufacturer is never legal, it is not so of an emblematic sign or of a label which has nothing personal, and a manufacturer can be adjudged to have voluntarily abandoned it. Leroy *v.* Calmel, C. de Cass, 10 March, 1864, 10 *Ann. de la Pro.* 193. See § 1127.

§ 1130. *Fancy name.— Perles d'éther.*— The name *perles*, applied to ether and other pharmaceutical products, is applied to the capsules or enveloppes, and not to the medicine itself, and not being otherwise a generic name, and one necessary to distinguish the product, can legally be an object of exclusive property, protected by law of 1857. Clertan *v.* Charpentier, C. de Cass, 22 March, 1864, 10 *Ann. de la Pro.* 341.

§ 1131. *Employee.—Like name.*—An employee cannot state, in his circulars, on entering into business for himself, his services in a house of which he is a rival. In the case of like names the manufacturer who founds a new house, ought by the

addition of his given name, or by some other distinctive qualification to avoid all confusion with the old house. Fould *v.* Honegger, Trib. de Comm. de la Seine, 11 April, 1864, 10 *Ann. de la Pro.* 323. See §§ 1122, 1125.

§ 1132. *Names of Foreign Manufacturers.—Long use in France.*—Although the law of 1857, and the treaty of 1860, between France and England, gave to English manufacturers the right to obtain the exclusive use in France of their names and marks, by making the deposits required by law, this is not the case if the names and marks so deposited had previously gone into general use; consequently the judgment was correct which decided that the English manufacturers have a legal right in France to the special mark which they have deposited by reason of the treaty, but not to the employment of their name, it being proved, that for more than fifty years that name had been used in France, to indicate not the origin, but the nature of certain products. Spencer *v.* Peigney, C. de Cass, 30 April, 1864, 10 *Ann. de la Pro.* 197.*

§ 1133. *Fancy name.—"Encre indienne."*—A fancy name, such as "Encre indienne" (Indian ink), applied to a known product (a common ink), becomes a trademark under the law of 1857, when the legal deposit has been made. Chevénement *v.* Forest, C. de Bordeaux, 30 June, 1864, 10 *Ann. de la Pro.* 446. See § 1116. (Scarlet water).

§ 1134. *Fancy name.—Color and shape of*

* To the same effect, Stubbs *v.* Astier, C. de Paris, 29 April, 1864, 10 *Ann. de la Pro.* 212; S. C., on appeal, C. de Cass, 4 February, 1865; 11 Id. 81. Before the treaty, Spencer *v.* Mennier, C. de Paris, 3 June, 1843, *Journal du Palais*, 1843.

boxes.—The name "*fil d'Alsace*," Alsace thread, is a good trademark when applied to thread.

2. There is an unlawful rivalry in the servile imitation of the form, color and disposition of the boxes of another manufacture, so as to establish a confusion between their products (C. C. 1382). Dollfus *v.* Lallemand, C. de Paris, 5 January, 1865, 11 *Ann. de la Pro.* 110.

§ 1135. *Fancy name.*—"*La trappistine.*"—The fancy name "*La trappistine*," given to a liquor, is a good trademark. There is such an imitation of a mark as to give rise to an action, when the adoption of the names and labels may create a confusion between the products of different manufacturers, even though the name is preceded by the words "*dite*" or "*façon de*" ("said" or "style of").

(The word "*trappistine*" was derived from the name of the convent *La Trappe*, where the liquor was first made.) Michel *v.* Stremler, Trib. de Comm. de la Seine, 17 January, 1865, 11 *Ann. de la Pro.* 284.

§ 1135*a*. *Similarity of names.*—The use of a firm name, identical with that of a firm already existing, is not unlawful in itself, and the use of the name cannot be enjoined. But when the use of the name is accompanied by unwarranted manœuvres, to deceive buyers, the new-comers should be decreed to add such things as are proper to prevent confusion,—especially the mention in their firm name, and in their marks and labels, of the given name of the merchant, and the date when the second house was founded. Louis Roederer & Co. *v.* Théophile Roederer, C. de Paris, 6 February, 1865, 11 *Ann. de la Pro.* 58. See § 1118.

§ 1135*b*. *Cylindrical form.—Cigarette paper.*—The cylindrical shape of a package of cigarette paper is not of itself a good trademark. The imitation of this shape is not an act of unlawful rivalry in business. Prudhon *v.* Villaret, C. de Paris, 24 June, 1865, 11 *Ann. de la Pro.* 443.

§ 1136. *Generic emblem.—Leaf.*—A trademark made up of a number of elements, of which the principal is a vine leaf, a generic object, is not infringed or fraudulently imitated by the use of the same generic object, if accompanied by different names or ornaments, striking to the eye. Denis *v.* Vignier, C. de Bordeaux, 9 August, 1865, 12 *Ann. de la Pro.* 430.

§ 1137. *Name of manufacturer.—Infringement.*—When a label, adopted as a trademark, contains among other distinctive signs the name of the manufacturer, it is not necessary that the name be reproduced or imitated, to constitute an infringement,—it is sufficient if the other parts of the label are so imitated as to tend to deceive buyers. Bass *v.* Harris, C. de Paris, 31 March, 1865, and C. de Cass, 12 August, 1865, 12 *Ann. de la Pro.* 161.

§ 1138. *Imitation of Label.—Generic name.—Serpents de Pharaon.*—A fraudulent imitation of a mark or label, under art. 8, law of 1857, is made when the imitation is of such a nature as to deceive the public. Therefore, differences in details,—such as a modification of the name of the product, and the indication of the name of the manufacturer,—do not take out of the operation of the law, marks and labels on which are imitated the form and arrangement of the labels of another manufacturer in such a manner as to create confusion between their products.

2. The word *serpent*, as applied to a toy made from *sulphocyanide of mercury*, which assumes the form of a serpent on being set on fire, is a generic name. Barnett *v.* Kubler, C. de Paris, 21 March, 1866, 12 *Ann. de la Pro.* 144.

§ 1139. *Fancy name.—Papier Job, and papier Guerre à Job.*—Plaintiff used as his trademark his initials J. B., separated by a lozenge. His cigarette paper became popularly known from this, as Job paper. Defendant sold cigarette paper put in books of the same color as those of plaintiff, but with different ornaments, bearing in large characters, *Guerre à Job. Papier très supérieur. Paris*, 80 Rue de Rivoli, 80 (War on Job. Very superior paper, &c.). On the reverse was a notice that the mark was not the same as that which was called *Job*, but the paper enclosed was rendered superior to the *Job* by the addition of hygienic substances. *Held*, that as the lawful rivalry, which ought to exist between two merchants cannot be extended to embrace the right to make a partisan strife with a rival, and to designate him by name in advertisements and prospectuses running down his goods,—the aim of the advertiser being to turn to his profit the customers of his rival . . . injunction should be granted against the use of the word *Job*, by defendant. Damages. Bardou *v.* Sabatou, Trib. de Comm. de la Seine, 16 May, 1866. 14 *Ann. de la Pro.* 140. Affirmed on appeal, 15 *Id.* 115.

§ 1140. *Name.—Infringement.*—Bertin was a manufacturer of gloves, which he called, *Bertin gloves*. Defendants sold gloves not of Bertin's make, which they called *Bertin gloves*. They were enjoined against the use of the name of *Bertin*, on

goods not made by him. Bertin *v.* Taconnet, C. de Paris, 20 June, 1866, 13 *Ann. de la Pro.* 266.

§ 1141. *Sale of mark.*—A manufacturer may adopt different marks and names for his products. He may sell one of his marks to another. Abadie *v.* Prudon, C. de Cass, 27 July, 1866, 12 *Ann. de la Pro.* 343.

See §§ 1149, 1154.

§ 1142. *Fancy name.—Royal Victoria.*—The union of two English words, such as *Royal Victoria*, constitutes a good trademark in France, even though the same words had been employed separately in labels on similar merchandise, especially on pins,—or even united, but on different merchandise, such as needles.

2. Where a label is composed of a title, such as *Royal Victoria*, and various statements and ornaments, the use of the label with the distinctive title changed (*e. g.*, Royal Victoria to Royal Regina), is a fraudulent imitation of it (Art. 8, Law of 1857). Sargent *v.* Romeu, C. de Paris, 17 January, 1867, 13 *Ann. de la Pro.* 21. To same effect, Sargent *v.* Roger, 12 *Id.* 170.

§ 1143. *Geographical name.—Unlawful rivalry. —Imitation of products.*—When a manufacturer has adopted a mark containing the name of the place where his factory is situated, it is an act of unlawful rivalry on the part of a manufacturer of a neighboring township to servilely imitate the kinds and the styles of the products of the first, and to insert in his prospectuses and letter headings, the name of the same place.

In enjoining such an abuse, however, the use of the name of the place should not be forbidden, if it is necessary to indicate the situation of the manu-

factory, and especially to make known the post office of the manufacturer. (Plaintiff established a reputation as a manufacturer of machine-made tiles at Montchanin. Defendant set up a rival factory at Saint-Julien-sur-d'Heune, five miles away. He imitated not only the tiles of the plaintiff, but also all the changes made by him, and inserted in his mark "*par Montchanin.*") Avril *v.* Perrusson, C. de Dijon, 8 May, 1867, 13 *Ann. de la Pro.* 345.

§ 1144. *Plurality of trademarks.*—There is no law preventing the adoption and use by a manufacturer or merchant, of more than one trademark at the same time. The same trademark may be the property of several persons jointly. Abadie *v.* Berha, C. de Paris, 23 May, 1867, 13 *Ann. de la Pro.* 348.

See §§ 1113, 1141, 1154.

§ 1145. *Crème d' Argent*, applied to a new chemical product, of use in the arts, is a good trademark.

It belongs to the first one who used it, irrespective of the date of deposit with the clerk of the Tribunal of Commerce. Its use by another, without right, before the deposit, does not invalidate the mark. Levy *v.* Bizet, Trib. de Comm. de Rouen, 31 Nov. 1867, 14 *Ann. de la Pro.* 105.

§ 1146. *Imitation.—Like names.*—Charles Camille Heidsieck was a manufacturer and exporter of champagne. Defendants formed an association for the manufacture and exportation of champagne to the United States, and obtained the use of the name of Herman Heidsieck who lived in Saint Louis, U. S. They servilely imitated the mark of Charles Heidsieck upon the corks of bottles, substituting only "Hermann" in place of "Charles;" they also imitated the four red bars on the covers of the bas-

kets enclosing his champagne. *Held*, that the reproduction of the name, the arrangement, and the emblems of a mark in order to cause a confusion between products, and to deceive buyers, is a fraudulent imitation of a mark under arts. 8, 9, 13 and 14, of Law of 1857, even though a person bearing the same name has been associated in the fraud, and his given name substituted for that of the owner of the imitated mark.

2. All those who have participated in such a fraud should be regarded as accomplices, whether they have caused the false marks to be made, or have given directions for the purchase and export of the merchandise fraudulently marked. Heidsieck *v.* Souris, C. de Paris, 11 Dec. 1867, 14 *Ann. de la Pro.* 95.

See §§ 1148, 1189.

§ 1147. *Generic names.—Riz Cartonné.—Papier de riz.*—When a manufacturer has adopted as a trademark for his product, a name which indicates its composition,—*e. g.*, *papier de riz* (rice paper), he cannot forbid the adoption by another manufacturer, in his trade, of the genuine name *rice*,—*e. g.*, as in *riz cartonné* (rice boarded), *feuille de riz* (rice leaf), *rouleau de riz* (rice roll). Lacroix *v.* Abadie, C. de Bordeaux, 17 Dec. 1867, 14 *Ann. de la Pro.* 100.

See § 1120.

§ 1148. *Similar firm name.—Concurrence déloyale.*—The courts have the right to inquire whether a person whose name appears in a firm name is really a partner, or whether his name is used only as a means of unlawful rivalry with another firm, and they may, if fraud is discovered, enjoin the use of the name. See §§ 1081, 1088,

1135*a*. Werlé *v.* veuve Clicquot, C. de Paris, 5 March, 1868, 14 *Ann. de la Pro.* 288.

§ 1149. *Sale of trademark.—Property.—Eau de Mélisse des Carmes.*—The liquor eau de mélisse was known to the public, and the name was in common use. Plaintiff claimed to have purchased from the convent of *Carmes* the secret of the manufacture of the eau de mélisse made by the monks of Carmes, and called *Eau de Mélisse des Carmes*, as well as their trademark, labels and bottles. Defendant made a liquor which he called "*Eau des Carmes déschaussés, la seule véritable eau de mélisse des Carmes*, imitating, at the same time, to a sufficient extent, as was held, to deceive the public, the form and appearance of the labels of plaintiff. The principal defense was that the *eau* was a medicine, and plaintiff, not being a pharmaceutist, had no right to make and sell it. *Held*, that a trademark regularly deposited is property, and is not affected by the right of the owner to manufacture the products of which it is the trademark. Boyer *v.* Boyer, C. de Cass, 8 May, 1868, 15 *Ann. de la Pro.* 162.

§ 1150. * *Name of product.—Eau de Mélisse des Carmes.—Imitation of labels, seals, vials and boxes.*—The name of a product (*e. g.*, *Eau des Carmes* or *Eau de Mélisse des Carmes*), which designates its origin and the name of its inventors, is the property of the latter and their legal representatives. In consequence, the use of that title on labels and goods, as well as on prospectuses and advertisements, is an unlawful rivalry (*concurrence déloyale*), giving rise to an action for an injunction

* This section should immediately precede § 1055.

and damages. The case is still stronger if the marks, labels, vials and boxes of the inventor are imitated, as well as the name.

2. Complete identity of mark is not necessary to constitute an infringement; it is sufficient if the infringing mark resembles the true so as to lead the public into an error prejudical to the proprietor.

Injunction against use of title, also against imitation of labels, vials, &c. Damages. Boyer *v.* Massieu David & Co., Trib. de Comm. de la Seine, 11 April, 1835, C. de Paris, 11 May, 1836, 21 *Ann. de la Pro.* 11.

§ 1151. *Infringement.—Manufacturers of spurious labels.*—The manufacture of trademarks and labels belonging to another, without the consent of the owner, is an infringement of the same under the law of 1857. The use of the trademark or label is not necessary to constitute infringement.

2. A lithographer, in whose establishment labels, in course of manufacture for a person who is not the owner of the trademark thereon, are seized, is liable to the penalties prescribed by the law of 1857. The agent who orders labels made for any other person than the proprietor of the mark is liable to the same judgment as an accomplice. Martell *v.* Badoureau, C. de Paris, 15 May, 1868, 14 *Ann. de la Pro.* 126.

§ 1152. *Descriptive name.*—When the name of a dealer has become, by general use, the name of a product, the successor of the dealer has no right of action for unlawful rivalry against another dealer who has announced for sale the same products under the same name.

(One Ternaux, a dealer in shawls, had given his name to a particular kind of brocade shawls, which

were generally made by manufacturers and called Ternaux shawls.) Bournhonet *v.* Tisseron, C. de Paris, 19 November, 1868, 15 *Ann. de la Pro.* 90.

§ 1153. *Purchasers of articles bearing false trademark* have a right of action against the seller if they bought the same in good faith, and have been adjudged to be guilty of infringement in a suit by the owner of the mark. Sargent *v.* Willems, Trib. Civ. de la Seine, 2 January, 1869, 16 *Ann. de la Pro.* 27.

§ 1154. *Variety of marks of same person.—Family seal.—Acquisition of trademark.*—A manufacturer or merchant may adopt special marks or labels, indicating the quality and nature of the products to which they are affixed, in addition to the mark intended for all his products.

2. Property in a trademark is acquired independently of the legal deposit, by one who first uses and continues to use it. The imitation and usurpation of his rivals, even though they occurred before the deposit, cannot be pleaded against him.

3. Whenever a trademark taken from a family seal has become, by its industrial application, the property of a commercial house, its use by members of the family in their daily social life does not authorize any of them to use it commercially in the same trade with one who had previously adopted it.

4. A trademark is fraudently imitated when the imitation is of such a nature as to deceive buyers. Consequently, differences of detail—such as the introduction of different emblems—do not cure the fault, if the whole tends to cause confusion of products.

(The part of family arms used was a man blowing a trumpet. Subject of manufacture, — sewing

thread.) Kerr *v.* Clark, C. de Paris, 4 February, 1869, 15 *Ann. de la Pro.* 259.

See § 1141.

§ 1155. *Fancy Name.—Deposit.*—A merchant has a right to give a fancy name to articles manufactured by others especially for him.

2. The mark *Marie-Blanche*, applied to silk, not having been legally deposited, the owner has an action for unlawful rivalry (C. C. 1382) against other merchants who use the same name. Jaluzot *v.* Taconnet, C. de Paris, 4 March, 1869, 15 *Ann. de la Pro.* 97.

§ 1156. *Signs.—Former workman.*—Defendant was formerly superintendent of the hat store of Pinaud & Amour. After having received at the Universal Exposition a medal as co-operator, he founded an establishment of his own, using as an announcement sign "Au 1er Avril, ouverture de la chappellerie du Jockey-club et du sport. H. de Henne coopérateur de J. Pinaud et Amour, médaille à l'Exposition de 1867."

(On the first of April, opening of the hat store of the Jockey Club and Sport. H. de Henne, co-operator of J. Pinaud & Amour. Medal of the Exposition of 1867.)

The use of the names J. Pinaud & Amour was enjoined. Pinaud *v.* Henne, Trib. de Comm. de la Seine, 10 March, 1869, 15 *Ann. de la Pro.* 122.

§ 1157. *Name.—Treaty between England and France.*—The name of a person is not a trademark protected by the law of 1857, unless it is used in a special form. The usurpation of a person's name is punishable by the law of 1824.

2. Article 12 of the treaty of January 23, 1860, between France and England, is applicable both to

trademarks and to commercial names which distinguish the articles of a manufacturer or a merchant. Therefore, an English manufacturer who marks his products with his own name, or the name of his predecessors, which he has legally deposited in France, has the right to an action for infringement, under the law of 1824. Wickers *v.* Frion, C. de Cass, 19 March, 1869, 16 *Ann. de la Pro.* 179. To same effect, Wickers *v.* Marchand, C. de Cass, 27 May, 1870, *Id.* 188.

§ 1158. *National coat of arms.* — A national coat of arms cannot become the trademark of a manufacturer. It may form part of a design which is a good trademark.

Plaintiff's mark (on hats) was composed of the English arms, surrounded by a ribbon containing the words "Christy's London" or "Chrysty's Best London." Defendant substituted the words "Quality Superfine London," in place of "Christy's Best London," leaving the mark otherwise the same. Held an infringement. Christy *v.* Daude, Trib. Civ. de la Seine, 30 June, 1869, 16 *Ann. de la Pro.* 31.

§ 1159. *Imitation* of a trademark is only actionable, when it is of such a nature as to deceive the public. This is so under either article 1382 of Code Civil or law of 1857. Prudhon *v.* Bardou, C. d'Alger, 10 July, 1869, 16 *Ann. de la Pro.* 282.

§ 1160. *Signs.—Different place.*—A business sign cannot become a trademark until it is legally deposited as required by law of 1857.

2. The right which results from the priority of use of a sign, does not extend beyond the locality where the use took place. It becomes the exclusive property of the first user in each place.

Plaintiff's establishment at Paris bore the name and sign *Photographie Hélios*. Defendant afterwards commenced business at Troyes, and called his establishment, on his sign, &c., by the same name. Injunction refused. Berthaud *v.* Lancelot, C. de Paris, 21 July, 1869, 16 *Ann. de la Pro.* 290.

See next section.

§ 1161. Defendant in § 1160 brought suit against the plaintiffs therein, for an injunction, to restrain them from using the sign *Photographie Hélios*, in Troyes,—defendant having been the first to use that sign in that place. Injunction granted. Lancelot *v.* Berthaud, C. de Paris, 26 March, 1870, 16 *Ann. de la Pro.* 292.

§ 1162. *Emblems in common use.*—BY THE COURT.—Considering that Hérold deposited as a trademark, May 24th, 1867, at the office of the secretary of the Tribunal of Commerce of the Seine, a design, representing a gilded bee, intended as a stamp for the linings of the hats which he made; that it results from the proceedings, that at a time preceding the deposit of Hérold's mark, Gerbeau was in the habit of stamping his goods with a gilded bee, and that this was known to Hérold. Considering, that as emblem or ornament, the bee is in common use, and that, in adopting it as a trademark, without attempting, by the aid of a combination of distinctive signs, to produce an original design susceptible of a proprietary right, Hérold has misunderstood the spirit of the legislation on the subject, which permits the use of names,—and by analogy of emblems,—in common use, as trademarks, on the condition of producing them in a distinguishing form. . . . . Judgment for

defendant. Hérold *v.* Gerbean, C. de Paris, 22 January, 1870, 16 *Ann. de la Pro.* 76.

§ 1163. *Form of product.—Sewing machine.*—The special form of a product (*e. g.*, of a sewing machine, as it comes from the factory), even though it be new, and has been regularly deposited, cannot be a trademark by itself under the law of 1857.

2. If the usurpation of the form may in certain circumstances give rise to an action, it can only be under article 1382 of the Civil Code. Wilcox *v.* Aubineau, C. de Paris, 23 March, 1870, 17 *Ann. de la Pro.* 32.

See § 1078.

§ 1164. *Label.*—Defendant, J. L. Martel, imitated the label of the older house of J. F. Martel & Co., almost entirely, but added thereto, "House founded in 1870," which could easily escape the notice of purchaser. *Held*, that the act of defendant came within articles 13 and 14 of law of 1857, and was an infringement. Martell *v.* Martel, C. de Bordeaux, 7 July, 1871, 18 *Ann. de la Pro.* 263.

§ 1165. *Confusion.—Borders of cloth.*—Where there exists between two borders of cloth sufficient differences to prevent confusion on the common and ordinary examination made of goods, there is neither infringement or unlawful rivalry. Dugué *v.* Dobot-Descoutures, C. de Caen, 11 December, 1871, 17 *Ann. de la Pro.* 305.

§ 1166. *Imitation.—Color of envelope.—Chocolat Menier.*—There is a fraudulent imitation of a trademark or label, when there is a general resemblance, such as to deceive buyers, between the true mark or label and the one in question.

2. Although the shape of the product and the color of its envelope do not form a part of the

mark, their imitation, joined to that of the label, constitutes an element in the proof of fraudulent intent. Menier *v.* Meunier, C. de Bordeaux, 13 December, 1871, 18 *Ann. de la Pro.* 5.

§ 1167. *Imitation. — Delay.—Chocolat Menier.*—There is a fraudulent imitation of a mark (art. 8, law of 1857), when the principal characteristics and the general aspect of a label, lawfully deposited, are intentionally reproduced, even though the name on the label is not the same, and there be differences of detail.

2. The manufacturer who has made use of infringing labels for less than three years, cannot invoke either as a defense or as an excuse of good faith, the age of the infringing labels, and the fact, that he obtained them from his predecessor, who had made use of them for several years.

(Defendants adopted the color and shape of wrappers of plaintiff, the form of his cakes of chocolate, the same disposition of three medals on the label, but substituted the word Niemen for Menier). Menier *v.* Merget & Kessler, C. de Paris, 3 February, 1872, 18 *Ann. de la Pro.* 18.

§ 1168. *Fraudulent use of siphons bearing trademarks.—Exchange.— Custom.*—Whe ever siphons containing water charged with gas bear the trademark of a manufacturer, another manufacturer has no right to use these siphons for holding the same kind of water, even though it is a custom for different manufacturers to indiscriminately fill the siphons returned by their customers in exchange for others (Art. 1382, C. C.). Pie *v.* Poulet, C. d'Amiens, 10 Feb. 1872, 20 *Ann. de la Pro.* 46.

§ 1169. *Form of product, labels and wrappers.— Chocolat Menier.*—There is a fraudulent imitation

of a mark, and unlawful rivalry in the fact of employing for like products the same shape, the same method of enclosure, the same colored envelopes, and labels of the same size, having the same appearance, even though they differ in the name of the manufacturer. Menier *v.* Louit, Trib. Civ. de Rouen, 19 March, 1872, 18 *Ann. de la Pro.* 21.

§ 1170. *Fancy name.* — *Bougie de l'étoile* (candle of the star), applied to candles, is a good trademark. It is an infringement of it to use the words Bougie de l'étoile, on packages of candles, although accompanied by the word *belge* (Belgic), printed in small characters below.

2. The French tribunals have no jurisdiction over actions for infringements of trademarks out of France. De Milly *v.* Jaussen, Trib. Corr. d'Eperney, 30 April, 1872, 17 *Ann. de la Pro.* 338.

§ 1171. *Use previous to deposit.—Presumption in favor of depositor.—Infringement.—Chocolat Menier.—Abandonment.*—Property in a trademark is acquired by possession and use in addition to the deposit. It is sufficient to sustain an action on a trademark, that the last deposit is valid, without reference to previous deposits, or to use by the plaintiff previous to any deposit.

2. The deposit of a mark raises a presumption of priority in favor of the depositor. It is for his opponents to prove that it was in public use previous to the employment which the depositor made, or that it has since entered into public use by abandonment.

3. The abandonment of a deposited and used mark is not presumed, and the title to the mark

cannot be injured by neglect to prosecute infringements during a long or short period.

See § 1167.

4. When the proprietor of a mark or label, legally deposited, brings an action for the usurpation or imitation of his labels, as well as the form of his goods, the mode of wrapping them, and the color of the envelope, it is no defense that some of these elements were previously in public use. Menier *v.* Buisson, Trib. Civ. de Lyon, 31 July, 1872, 18 *Ann. de la Pro.* 24.

§ 1172. *Name of patented article.—Charbon de Paris.*—The patentee of a conglomerate coal (called Charbon de Paris), and his successors, after the expiration of the patent, have an exclusive right to the name given by him to the patented product,—if it is deposited as a trademark, and is not a necessary title to distinguish the product. Brousse *v.* Cressent, Trib. de Comm. de la Seine, 5 December, 1872, 18 *Ann. de la Pro.* 248.

§ 1173. *Fraudulent use of bottles of manufacturer of waters.*—Whoever fills with water, charged gas, of his own manufacture, bottles of another manufacturer, is guilty of the fraudulent use of the trademark of the other on said bottles, and of deceit (art. 7, § 2, and art. 8, § 2, law of 1857). That the bottles used were returned by his customers instead of his own, makes no difference. Chapotel *v.* Feron, Trib. Corr. de la Seine, 7 February, 1873, 19 *Ann. de la Pro.* 388.

See § 1168, 1177.

§ 1174. *Form.—Name of product.*—Plaintiffs were manufacturers of "*Eau dentifrice du docteur Pierre*" (Dental water of Dr. Pierre). Defendant (Pierre Proux), sold a similar product in bottles

of the same shape and size, under the name "*Eau dentifrice de Pierre.*" Defendant contended that the style of bottles he used was in common use for the purpose; that although the labels had the same form, his name Pierre was not preceded by the word *docteur*. *Held*, that notwithstanding dental water was generally sold in bottles of the same shape as those of defendant, yet the product being for the same purpose, of same color, sold in similar bottles, covered with labels of the same shape, arranged in the same manner, and containing the name Pierre, with the same pricemark as that of plaintiff, confusion between them was easy. Defendant was ordered to adopt the following title "Eau dentifrice de Pierre Proux, Médecin-dentiste, Cours de l'Intendence 42, à Bordeaux," the word Proux, in larger character than Pierre. Chouet *v.* Pierre Proux, Trib. de Comm. de la Seine, 18 February, 1873, 19 *Ann. de la Pro.* 186.

§ 1175. *Infringement.—Paper Job and Joc.*—The word *Joc*, and the initials J. H. B used on like products (cigarette paper) are an infringement of the trademark *Job*, when they are printed in like characters, in the same place, on a cover of the same size, and accompanied by analogous inscriptions and ornaments (Articles 7 and 8, law of 1857). Bardou *v.* Berha and others, Trib. Corr. de la Seine, 20 February, 1873, 18 *Ann. de la Pro.* 65.

§ 1176. *Fancy name.—Deceit.*—Although the merchant who first made use of the name *phospho-guano*, may have a exclusive right to the use of it; he has no action against another who uses the words *phosphate-guano*, or *guano-phosphoazoté*, without remainder of mark.

2. Although, at first, the use of the word *guano*,—

the name of a natural product,—might have been an infraction of the law of 1867 against deceit, it is no longer so, in presence of the general usage of so naming all artificial manures, which are more or less similar to the natural. Lawson *v.* Dechaille, C. de Paris, 26 March, 1873, 18 *Ann. de la Pro.* 72.

For another cause, on same trademark, by same plaintiffs, see Lawson *v.* Wel, C. d'Amiens, 21 June, 1873, 18 *Ann. de la Pro.* 378.

§ 1177. *Fraudulent use of Receptacles. — Custom in same trade.*—When receptacles, such as bags, for natural or manufactured products, bear the trademark or name of a manufacturer or merchant, another person in the same trade cannot use them for his own products, even though in using bags returned by customers, in place of those sent by him, he only followed the general practice of the trade. Nivet *v.* Modenel, C. de Bordeaux, 6 June, 1873, 19 *Ann. de la Pro.* 130.

See § 1168, 1173.

§ 1178. *Fancy name.—Translation of name in common use.*—The manufacturer or merchant who has made the first use of a particular name for his products, and who has made a legal deposit of it, has a right of action against its usurpation and fraudulent use, even though the name be but a translation into a foreign language of a name in common use (articles 1, 7, §§ 2, 13 and 14, law of 1857).

(*Eau divine* [divine water], a name in common use, was translated into Spanish, *Aqua divina*, and deposited as a mark with the secretary of the Tribunal of Commerce.) Coudray *v.* Monpeias, C. de Cass, 14 November, 1873, 19 *Ann. de la Pro.* 31.

See § 1116, l'eau écarlaté, and § 1142, Royal Victoria.

§ 1179. *Firm name.*—A firm name can alone be made up from the names of the partners. Every interested person has the right to demand the suppression from a firm name, of a name which does not belong to any of the partners. Leperche *v.* Ricaumont, C. de Bordeaux, 27 November, 1873, 18 *Ann. de la Pro.* 391.

§ 1180. *Name of patented product.*—The name given by the inventor, to a patented product, becomes public property at the expiration of the patent.* Patents for improvements do not preserve to the owners of the improvements, the right to the name given in the first patent, and prevent it entering into common use.

But, although every one may use the name, no one has the right to use boxes, labels and bill-heads, similar to those of the inventor or his successors. Michel *v.* Gerstlé, C. de Paris, 24 December, 1873, 19 *Ann. de la Pro.* 75.

See § 1130, *Perles d'ether*; § 1172, *Charbon de Paris.*

§ 1181. *Product and process in common use.—Name of inventor.—Emblems.*—Liebig's Extract of Meat Co., an English corporation, having a place of business in Paris, put up an extract of meat, invented by Dr. Liebig, and known in commerce as *Extractum Carnis Liebig.* They made a legal deposit of their trademark, which contained that phrase as an essential part. It was also surrounded with emblems, such as the head of an ox, &c.

* Such is the general principle in cases of generic or necessary names.

Defendants put up an extract of meat under same name. The process and product had been given to the public by Dr. Liebig. On suit brought to restrain defendants from using the name Liebig and infringing their mark, *Held*,

1. That the abandonment of the ownership or use of a proper name was not to be presumed. The inventor of a product or process, who has published it with the intention of giving it to the public, cannot be presumed by that alone, to have abandoned the use of his name to all those who shall prepare the product after his process. Therefore, he preserves the right to either entirely forbid the use of his name, or to grant the exclusive use of it to a commercial house.

2. In such a case the grantees have an action to enjoin the use of the name of the inventor; even its use to indicate that the product had been obtained by his process.

3. A generic emblem, such as the head of an ox, when used as an accessory in a label on extract of meat, is not by itself a trademark. The use of the same figure by others does not constitute an infringement. Titles, such as *Extractum Carnis* or *of meat*, serving to indicate the nature of a product in common use, are not valid trademarks. Liebig, &c. *v.* Coleman, C. de Paris, 12 January, 1874, 19 *Ann. de la Pro.* 83. See § 654.

Appeal, see § 1192.

§ 1182. *Infringement.—Phospho-guano.*—The use of the title *super-phosphoazoté* on a manure, does not of itself constitute an infringement or fraudulent imitation of the title *phospho-guano*, used by another merchant as *part* of a trademark. It must be accompanied by an imitation of the

accessory element of the mark. Lawson *v.* Dior, C. de Caen, 20 January, 1874, 20 *Ann. de la Pro.* 318. See §§ 1176–1191.

§ 1183. *Unlawful rivalry.—General appearance.—Name.—Successors.*—A merchant who imitates the shape of the bottles and labels of another manufacturer on products similar to his, is guilty of unlawful rivalry. This is so, even though the product is in use, and the infringer has introduced in his labels such differences as to enable them to be distinguished from the original when compared directly with them. It is sufficient that the general appearance of the bottles and labels was intended and results in the production of confusion between the products.

2. Although the expiration of the patent for a product gives every one the right to manufacture and sell the product, it does not give the right to use the name of the inventor; especially when the product has not ceased to be made under the name of the inventor by his successors.

3. The successors of an inventor or manufacturer who has manufactured, sold and made known, under his own name, a certain product, have a right of action against the use of the name by rivals in their products, or even in their prospectuses.

4. The successors have a right in their own prospectuses to warn the public against the use of the stolen name.

5. The law of 1857 on marks, has not abolished the law of 22 germinal an. XI., forbidding the use of the name of another manufacturer or of another city, preceded by the words *Façon de, &c.* Landon *v.* Leroux, C. de Paris, 6 February, 1874, 19 *Ann. de la Pro.* 68.

§ 1184. *Use by retailers of mark of wholesale dealer.*—A merchant who buys at wholesale goods, for re-sale at retail,—such as writing paper,—has the right to reproduce the mark of the manufacturer on goods sold by him in small quantities. The court reasoned that this could not be regarded as a fraud; and instead of being an injury to the manufacturer, it had the contrary effect of guaranteeing his goods and increasing their sale. Thomas de La Rue *v.* Massias, Trib. Civ. de la Seine, 7 February, 1874, 21 *Ann. de la Pro.* 321.*

§ 1185. *Infringement.—Proof.*—An infringement or fraudulent use of a mark takes place on the manufacture of the mark or label, independently of any use of same.

2. No law or principle prohibits the owner of a mark from ordering copies of it through a third person, for the purpose of proof of infringement. Reynal *v.* Wolff, C. de Paris, 19 March, 1874, 20 *Ann. de la Pro.* 49.

§ 1186. *Fancy name. — Public use in foreign country.*—The name of a manure, *phospho-guano*, having gone into public use in England, an English manufacturer of the article cannot obtain a legal property in it, as a trademark, by deposit in France, under the trademark treaty between France and England. Lawson *v.* Dechaille, C. de Cass., 21 and 23 March, 1874, 19 *Ann. de la Pro.* 153.

§ 1187. *Infringement.—Fancy name.*—Plaintiff was owner of the trademark *Liqueur du Mont-Carmel.* Defendant manufactured a liquor which

* The editor of *The Annales* takes exception to this decision, saying that fraud should be too easy, if the simple purchase of divisible goods would permit the retailer to multiply the trademark indefinitely.

he called *Carméline, liqueur de Notre-Dame du Mont-Carmel.* The bottles containing plaintiff's liquor were of an antique pattern, whereas those of defendant were of a modern form. *Held*, that there was no infringement, the principal title of defendant's product being *Carméline*, that of plaintiff, *liqueur du Mont-Carmel;* and otherwise no confusion being possible between the two marks from the appearance of the whole or of parts. Faivre *v.* Boulan, C. de Paris, 4 June, 1874, 19 *Ann. de la Pro.* 378.

§ 1188. *Prior use.—Infringement.*—In opposition to the defense of use of a mark prior to its deposit, the depositor may prove that he was its inventor; and that, if it was used by third persons before the deposit, it was by his authorization and without an abandonment of his rights.

2. He has an action against an infringer, after the legal deposit, even though it be proved that the use of the mark by the infringer commenced before the deposit, and was only continued afterwards. Guillou *v.* Derossy, C. de Paris, 29 November, 1873, C. de Cass., 20 June, 1874, 19 *Ann. de la Pro.* 321.

See § 1117.

§ 1189. *Like names.—Moët & Chandon.—Moet & Co.—Injunction.*—Although one's family name is his property, he has no right to make it an instrument of unlawful rivalry.

2. A merchant or manufacturer, who, being previously a complete stranger to a certain industry, is called into a new firm, because of the similarity of his name with that of an old house, may be perpetually enjoined against the use of his name in that industry.

3. Plaintiffs were the old house of *Moët &*

Chandon, dating from 1807. The firm Moet & Co. was formed by Leblanc, a brewer of Reims, who brought one Jean Frederic Moet, a clerk in a commercial house at Maëstricht, Holland, to Reims, for the purpose. This Moet had no knowledge of the manufacture of champagne wines, and only came to Reims to profit by the use of his name. Defendants took every precaution against liability to an action by Moët & Chandon, who had a place of business at Epernay, by establishing themselves at Reims, by putting at the head of their bills, letters and shipping receipts, "House founded in 1872," and by reproducing it on the bottom of their corks, where the name of the manufacturer is usually placed in the trade of champagne wines; the two dots over the *e* were also omitted from the name of Moet. These differences were held not sufficient to prevent the deception of the public. Injunction and damages. (Art. 1382, Civil Code.) Moët et Chandon *v.* Moet et Ce., C. de Paris, 31 July, 1874, 19 *Ann. de la Pro.* 311.

§ 1190. *Fancy name of patented article.—Form of mark.—Fraudulent imitation.*—Plaintiff deposited as his mark for umbrelia frames, *Paragon de Fox*, stamped on a little coppered plate attached to one of the ribs. Defendant Meurgey, used the words *Paragon M et C*, placed in same manner. *Held*, a fraudulent imitation under article 8, law of 1857.

2. Defendant Teste adopted the form and position of the plate, but stamped his own name on it. *Held*, no infringement.

3. The frames of plaintiff were patented, but the patent had expired. *Held*, that it makes no difference that the product to which a fancy name is

given, is patented, if it was not patented under that name, and the name was not independently of the patent, generic; also that the public have applied the name to all products of a similar kind. This, being independent of the manufacturer, cannot cause him to lose his mark. Fox *v.* Meurgey and Teste, C. de Paris, 19 August, 1874, 19 *Ann. de la Pro.* 327.

Same case on appeal, § 1195.

§ 1191. *Fancy name.—Infringement.—Phospho-guano.*—When a trader has deposited a trademark which is composed of a fancy name, *phospho-guano* and accessory signs and emblems, the whole forming the trademark, the judges of the fact may decide that the depositor did not intend to reserve to himself the right to the name phospho-guano disconnected from the accessory signs. In that case the isolated use of the name is not an infringement (Law of 1857). Gallet-Lefebvre *v.* Goubean, C. de Cass., 30 December, 1874, 20 *Ann. de la Pro.* 314.

See § 1182.

§ 1192. *Name.—Use by public.—Liebig.*—BY THE COURT.—As it results from the proofs of the judgment attacked, that the deposit made by the company is valid and regular; that the use of the name of Liebig in England, as a necessary title of the product to which it was given, is not proven; and if a commission taken there, establishes that there was prepared under the name of Liebig an extract of meat, in certain prescription rooms of apothecaries, these preparations were isolated, in pharmaceutical doses, and did not have the publicity requisite to give Liebig such notice as to require him to protect his name. Objection of contrary decision in English court of chancery, November 19, 1867,

overruled. Appeal dismissed. Demot *v.* Société des héritiers Liebig, C. de Cass., 6 January, 1875, 20 *Ann. de la Pro.* 115.

See § 1181.

§ 1193. *Name of inventor.*—The name of the inventor does not become public property on the expiration of his patent, unless the same is necessary to describe the thing invented. In the case of Jouvin, who had taken a patent for an instrument and process for cutting out kid gloves, and had adopted his own name as a trademark, it became the property of his heirs and representatives after his death, and its usurpation gives rise to an action for damages and an injunction.

2. When, on account of the dissolution and change of firms, there remain two or more who have the right to use the same name in the names of their respective firms, it belongs to the court to prescribe the measures that it deem necessary to prevent confusion; and especially such as to leave to the heirs the benefit of the reputation of their ancestor. It may enjoin a new firm, either from using the name of the inventor alone, without a distinguishing title, or with the word patented joined to it, although the new society may have taken a new patent. Veuve Xavier Jouvin *v.* Jouvin, Doyon et Cie., C. de Paris, 25 January, 1875, 20 *Ann. de la Pro.* 237.

§ 1194. *A stripe on cloth*, composed of one or more threads of different colors, woven either at the border or end, and new by position or arrangement, is a good trademark. (Article 1, law of 1857.)

2. The burden of proof is on the defendant, who claims that the mark legally deposited was in public use prior to the deposit.

(Mark deposited was a green and yellow stripe on elastic webs for shoes.) Cuillieron-Policard *v.* Gadobert, C. de Paris, 27 January, 1875, 21 *Ann. de la Pro.* 62.

See § 1113.

§ 1195. *Combination of elements in common use.—Fraudulent imitation.—Fancy name.*—The union of different elements in common use may constitute a trademark, when such union is of a kind to distinguish the product in a distinct and characteristic manner.

2. There is a fraudulent imitation of a trademark under article 8, law of 1857, when the imitation is of such a kind as to deceive purchasers in regard to the origin of the product.

3. It is for the judges of the fact to decide whether the imitation is of the kind above described; in consequence, the decree escapes the censure of the court of cassation, which condemns a defendant for a fraudulent imitation of a trademark on a finding of fact, "That the imitation does not result solely from the use of the word *Paragon*, but as well from the inscription in relief on a coppered tablet, in every respect like that of plaintiff, and placed on the same part of the umbrella frame, in such a manner as to differ only by the initials, which would only be noticed by a very attentive observer." Fox *v.* Meurgey and Teste, C. de Cass., 6 February, 1875, 20 *Ann. de la Pro.* 213.

See § 1190.

§ 1196. *Fancy name.—Expiration of patent.—General use.—Charbon de Paris.*—The manufacturer who has given to his products a fancy name, cannot maintain an action for its usurpation when he has abandoned it to public use,—*e. g.*, where a

title, such as *Charbon de Paris*, given by an inventor to a conglomerate coal that he has patented, has become by long use, and without opposition on his part, the general name for that kind of product, he cannot by a tardy deposit of the name regain its exclusive property. Brousse *v.* Cressent, C. de Cass., 8 February, 1875, 22 *Ann. de la Pro.* 91.

§ 1197. *Name.—Use by stranger.*—Defendants were dealers in ready-made clothing, in Paris, and put on sale and advertised extensively an overcoat of inferior cloth, which they called the *Montagnac.* They advertised in the *Figaro*, that all the pawn shops of Paris were filled with them as security for loans of 25 francs, when the garment cost but 19. Plaintiffs Montagnac, were manufacturers of cloth at Sedan, of an honorable reputation. They complained that the use of their name in such a manner was prejudicial to them, by causing people to believe that the common cloth of these coats came from their factory.

Defendants were enjoined the use of the name Montagnac. Damages 1,000f. Montagnac *v.* Halphen, Trib. Civ. de la Seine, 12 February, 1875, 20 *Ann. de la Pro.* 95.

§ 1198. *Name.—Lubin.—Sale of use of name.*—Plaintiffs were successors of one Lubin, whose perfumeries and toilet articles had obtained a great reputation. Defendants manufactured articles for the toilet, such as cold-cream, which were put up in pots, &c., bearing labels indicating the nature of the contents, and including the name Jean Lubin, printed in large characters. The name was also printed in the form of a signature on a stamp attached like an English postage stamp. On a slip of paper surrounding the package was printed,

"Exact on each product the signature *Jean Lubin*." Defendants justified the use of this name, which was not their own, by an agreement with one Jean Lubin of Cahors, which granted to them certain receipts of his invention and the right to use his name.

Held, that a proper name is not an article of commerce, and is only property so far as it is connected with a pre-existing business of which it has become the title by the use which has been made of it. Defendants were enjoined against use of name Lubin. Damages. Prot *v.* Hervé, Trib. de Comm. de Lyon, 27 April, 1875, 20 *Ann. de la Pro.* 108.

§ 1199. *Fancy name.—Veloutine.*—The fancy name *Veloutine* applied to a mixture of rice powder and bismuth, is a trademark which, when legally deposited, gives a right of action against those who make use of it without permission on similar productions. Fay *v.* Durand, Trib. Civil de la Seine, 8 May, 1875, 20 *Ann. de la Pro.* 245.

§ 1200. *Name.—Inventor of patented machine. —Howe sewing machine. —Franco-American Treaty.*—Property in a proper name is imprescriptible, and its abandonment is not presumed. It is the same in case of the name of the inventor of a patented machine, even though his patent has expired, and, in common language, the patented machine is called by his name. This usage, though constant, cannot rob an inventor of his name, especially if he has not ceased to manufacture and sell machines of the same kind.

2. He is an infringer of a name under law of 1824, who puts it on a machine not made by himself, although he places before it the words *system of*, or adds his own name.

The treaty of 1869 between the United States and France, and that of 1860 between England and France, stipulating reciprocal guaranties of trade-marks, includes the names of business men which distinguish their goods. Howe Machine Co. *v.* Maquaire, C. de Paris, 18 November, 1875, 20 *Ann. de la Pro.* 353. Case below reported *Id.* 337.

§ 1201. *Infringement.—Eau de toilette de Lubin* is infringed by the title *Eau de toilette aux fruits et fleurs de Lupin*, or *Eau de toilette du Liban* (toilet water, . . .), used on the labels of the same kind of product when, by the arrangement of the words, and resemblances of the bottles and labels, it is apparent that there was an intention to establish a confusion between the products.

2. It makes no difference that the infringing trademark was deposited at a date prior to that infringed. Prot *v.* Cabridens, Trib. Civ. de la Seine, 22 November and 16 December, 1875, 20 *Ann. de la Pro.* 369.

§ 1202. *Fraudulent imitation.—Eau de mélisse.* —Plaintiff's label (legally deposited) was printed in black on a white ground, *Eau des Carmes déchaussés de la rue de Vaugirard, de Boyer, Rue Taranne, No.* 14, *à Paris.* Blown on his bottles were the words *Eau des Carmes*, BOYER, *rue Taranne, No.* 14. Defendant Roger Boyer put up eau de mélisse in bottles on which were blown *Eau de mélisse de Boyer, pharmacien à Paris.* His labels were printed in black, on a white ground, *Eau de mélisse des Carmes préparée par R. Boyer, Rue Taranne, No.* 6. The boxes in which the bottles were put up, were imitated. Defendant claimed that there were sufficient differences between the products to distinguish them.

Held, that it is sufficient to constitute a fraudulent imitation of a mark under article 8 of law of 1857, that the general aspect of the infringing mark be the same, and that designed resemblances of certain details, such as the form, color and arrangement of labels, stamps and seals, be of such a kind as to deceive inattentive or inexperienced buyers.

2. In such a case the fraudulent intent may be established not only by resemblances of the labels and other distinctive signs deposited, but also by accessory facts, such as the shape of the receptacles, the method of packing, &c., which do not constitute a trademark in themselves. When a merchant has made himself known in a certain industry, or in the manufacture of certain goods, rival merchants of the same name should, more than any others, avoid resemblances of marks of such a kind as to lead to confusion. A. Boyer *v.* R. Boyer, C. de Paris, 27 November, 1875, 21 *Ann. de la Pro.* 20.

See §§ 1149, 1150.

§ 1203. A. Boyer, mentioned in section 1202, brought suit against Cassius Boyer and Ratel, who, in selling Eau de mélisse, used a square label printed in black on a white ground, *Eau de mélisse des Carmes Saint-Jacques, C. Boyer, Rue Brezin, No.* 33, *Paris.* The name C. Boyer was printed in the same manner as that of plaintiff, but at the left of the label instead of the right. The type employed was different.

Held, that there is a fraudulent imitation of a mark, the moment that the labels and stamps employed present resemblances of such a kind as to deceive any number of buyers, even though differences had been introduced and the name modified.

A. Boyer *v.* Cassius Boyer, Trib. Corr. de la Seine, 9 December, 1875, 21 *Ann. de la Pro.* 25.

§ 1204. *Treaty between France and England.—Fraudulent imitation.*—Article 12 of the treaty of commerce of January 23, 1860, between France and England, includes names and initials, as well as other marks; and allows Englishmen who have legally deposited their marks in France, to bring actions for fraudulent imitation of the same as well as for infringement by a servile copy.

2. There is a fraudulent imitation of a trademark under article 8 of law of 1857, when the resemblances and general appearance of the whole infringing mark are intentionally of such a kind as to establish confusion between the two marks, even though a careful comparison of the two would bring to light sufficiently striking differences, such as different names or initials—a sphinx in place of a lion. Lister *v.* Chardin, Trib. Corr. de la Seine, 28 December, 1875, 21 *Ann. de la Pro.* 72.

§ 1205. *Infringement.—Printing labels.*—The manufacture of trademarks is an infringement, independent of any use of same, or of any injury to the owner. It is sufficient that injury is possible. Lithographers are guilty of infringement, who have made and delivered infringing labels, with bills showing that they believed they were working for persons not the owners, although in reality the order had been given by the direction of the latter for the purpose of proving the infringement. This is not so, if it is proved that the owners of the mark were guilty of any manœuvres to entrap the confidence and good faith of the lithographers. Reynal *v.* Wolff, C. de Cass., 15 January, 1876, 21 *Ann. de la Pro.* 5.

See § 1151.

§ 1206. *Limitation of action for infringement.*—"*Exact the signature.*"—Where a manufacturer has manifested by several successive deposits, and by suits against infringers, the intention to preserve the ownership of his trademark, it is no defense to an action for infringement, that he has neglected to bring suit against other infringers for a greater or less time.

2. The use of the words, *Exact the signature*, . . on the labels of a younger house, is an evidence of bad faith, to be considered in judging of a fraudulent imitation. Boyer *v.* Lemit, C. de Paris, 15 Jauuary, 1876, 21 *Ann. de la Pro.* 27.

§ 1207. *Name, when trademark.—Use after expiration of patent.*—"*Dit.*"—Names of persons, even though deposited, are not good trademarks, unless they are used in a distinctive form. The unauthorized use on a machine of the name of the inventor, unaccompanied by distinguishing accessories, is not an infringement under articles 7 and 8 of law of 1857, but may be a usurpation of name under law of 1824, and article 423 of Penal Code.

2. The expiration of a patent does not give the use of the name of the inventor to the public, unless he has voluntarily abandoned it, or by his own act the patented object cannot be otherwise designated. In the latter case, third parties who manufacture the same or analogous products should avoid every use of the name tending to deceive purchasers as to the origin of the articles made by them.

3. The manufacturer is guilty of a violation of the law of 1824, who places the name of the inventor on similar machines preceded by the word *dit* (called), in small letters, concealed among accompanying designs in such a manner as to show the

name only, and to produce a confusion between the products. Rogier *v.* Frappier, C. de Paris, 10 March, 1876, 21 *Ann. de la Pro.* 65.

§ 1208. *Master and servant.—Formation of new establishment.*—An employee who founds a new commercial house, has no right to mention the name of his former employer in his circulars. Use of name enjoined. Courtois *v.* Holzmann, Trib. de Comm. de la Seine, 30 March, 1876, 21 *Ann. de la Pro.* 111.

See § 1131.

§ 1209. *Name of iuventor.—Use of, after expiration of patent.—Howe.—Bijou.*—An English company which has obtained from an American company the exclusive right to make and sell in Europe a certain kind of sewing machine, and to use the name and trademarks of the American inventor, has a right of action in France against infringers of said name and marks, by virtue of the treaties of 1860 and 1862 with England.

2. The inventor of a patented machine and his assignors or heirs preserve the exclusive right to use his name after the expiration of the patent, unless it is proved that he has voluntarily abandoned it to the public.

3. Although any one may manufacture the machine after the expiration of the patent, he may not add to it the name of the inventor, either alone or with any qualification,—*e. g.*, *Bijou*, thus, *Howe-Bijou.* Howe Machine Co. *v.* Brion, C. de Paris, 26 May, 1876, 21 *Ann. de la Pro.* 170.

See § 1214.

§ 1210. *False designation of place of manufacture.*—The manufacturer is guilty of unlawful rivalry who gives to his products the name of a

place different from that of production, when there exists in the place whose name is taken, a manufacturer whose products have already acquired a celebrity under its name. In such a case the first occupant has a right of action for the suppression of the name which may cause confusion, as well from the letter-heads as from the trademarks of his rival. Lonquéty *v.* Famchon, C. de Douai, 6 July, 1876, 21 *Ann. de la Pro.* 317.

See § 1143.

§ 1211. *Fraudulent imitation.*—Plaintiff's deposited trademark consisted of a square label, reading as follows:

USINES DÉ WYGMAEL
E. REMY ET C^e^
AMIDON ROYAL DE RIZ
MEDAILLE D'OR
EXPOSITION—Paris, 1867—UNIVERSELLE
LOUVAIN

These words were surrounded by a frame-work of medals, obtained at various exhibitions.

Defendants adopted a new label in 1875, as follows:

AMIDONNERIE
S^t^ REMY O^ise^
AMIDON DE RIZ
MÉDAILLE D'ARGENT
EXPOSITION—Paris, 1867—UNIVERSELLE
MAISON FONDÉE EN 1822

It was printed like plaintiff's in white on a blue ground; the framework was of medals nearly the same as plaintiff's; the shape square.

BY THE COURT.—Although neither the blue color of the paper, nor the white color of the letters, nor the square form of the label, were property of plaintiffs, they having been in universal use for a

long time to designate these products, yet considering that in the mark of the plaintiff, the name Remy et Ce. forms the essential and characteristic sign, as well because it is the name of the manufacturers of the Amidon as because it is printed at the head of the label in large characters, and it is the name which best distinguishes the merchandise to purchasers. Considering that defendant, instead of announcing his goods in his labels by his name, concealed the same completely, and searched for a means of inscribing the name Remy in the same surroundings as the plaintiffs,—*i.e.*, at the head of his mark in large characters; that, for the purpose of giving himself the appearance of right, in 1875 he gave the name of Saint-Remy to his mill, situated in the commune of Agnetz, arrondissement of Clermont (Oise), when previously it had borne the name of *Moulin Lessier;* that it is certain that the arbitrary change of name had no other object than the right to inscribe the name Remy on his mark, and confound it with that of plaintiffs; that the imitation and fraud is also shown by the arrangement of the medals, the ribbons and framework represented in this mark, so that these resemblances, with the name Remy, are of such a kind as to deceive the public on the origin of the merchandise. . . . . defendants are guilty under law of 1857, articles 8, 13, 14. Damages and confiscation of labels. Remy *v.* Mauger, C. de Paris, 8 July, 1876, 21 *Ann. de la Pro.* 200.

§ 1212. *Like names.—Unlawful rivalry.—Injunction.*—When a merchant makes use of the similarity of his name and that of an old and well-known house, with the evident intent of profiting by its

notoriety, the proper courts have authority either to order the necessary measures to avoid all confusion or to enjoin the use of the name in the same kind of industry as that of the older house.

2. It is an act of unlawful rivalry on the part of a merchant or manufacturer to mention a known and old house, in such a way as to cause those who do not know well the two establishments, to suppose that his is the oldest and the most interested in hindering confusion. Veuve Erard *v.* Nicolas Erard and Coda, C. de Paris, 29 July, 1876, 21 *Ann. de la Pro.* 277.

§ 1213. *Pharmaceutical preparations.—Name of compounder.—Fancy name.—Fraudulent imitation.*—In matters of pharmaceutical preparations as well as in all others, the fancy name given to a product by its inventor or proprietor is, like his surname, his exclusive property unless he has abandoned it, or the preparation has no other distinguishing name.

2. For a fraudulent imitation of a mark under article 8 of law of 1857, it is not necessary that the whole label should be imitated; it is sufficient if the title of the preparation is taken and an analogous though different name of maker, the remainder of the labels being different.

(Defendants, when asked for a bottle of *Elixir tonique antiglaireux of Dr. Guillié*, sold a bottle with a label bearing at the top the name of the pharmacy Négre, and in the center the title *Elixir tonique antiglaireux F. Guillié.* The remainder of the label was different from that of Paul Gage, manufacturer of the true elixir.) Ministère Public *v.* Négre, C. de Grenoble, 31 August, 1876, 2 *Ann. de la Pro.* 225.

§ 1214. *Name. — Foreign firm. — Action in France. — Rights of assignee. — Treaty between France and England.*—The assignee of the name and trademark of a foreigner has a right to invoke the legislation and treaties which protect this name and mark in his own country. The special legislation and treaties which regulate this kind of property in the country of the assignor are immaterial. Therefore, an English company, having its factory in England, assignee of the name and marks of an American, has the right, under the treaties between France and England, to follow in France the usurpation of the name of the American, without the necessity of examination as to whether American legislation and Franco-American treaties authorize such action.

2. Article 12 of the Commercial Treaty of January 23, 1860, between France and England, applies not only to trademarks, but also to surnames, (*e. g.* Howe) serving to distinguish the products of a manufacturer or merchant.

3. When a defendant who has usurped a name, demands a new trial on the ground that the name has entered into public use as the title of the product manufactured, the judgment against him, finding as a fact that the plaintiff has done everything to preserve his exclusive property in the name, and the defendant has made a fraudulent use of it to deceive purchasers, is correct. Compagnie Howe *v.* Onfray, C. de Paris, 13 November, 1875, C. de Cass., 18 November, 1876, 21 *Ann. de la Pro.* 305.

See § 1209.

§ 1215. *Fraudulent imitation.—Eau de melisse des Carmes.*—The wording of plaintiff's label was

Eau des Carmes déchaussés de la rue de Vaugirard de Boyer, Rue Taranne No. 14, *à Paris*,—of defendants was *Eau de mélisse des Carmes de la rue de Vaugirard de Gélin, No.* 105, *a Paris*, The bottles of each were of the same form and size, and had the name of the product blown in the glass; they were corked in the same way, sealed with a red seal in the same place, and put up for sale, at wholesale, in similar boxes, with inscriptions and designs equally tending to establish confusion between the two. Defendant claimed that all the dealers in *eau de mélisse* had adopted like bottles and boxes, and that his name and address were sufficient to prevent any confusion.

Held, a violation of article 8 of law of 1857. Boyer *v.* Gélin, C. de Paris, 14 December, 1876, 22 *Ann. de la Pro.* 66.

§ 1216. *Name.—Injunction against use of.*—Whenever a merchant lends his name for the purpose of causing an unlawful rivalry with another, he commits such a wrong as to authorize the court to enjoin the use of his name in the specific trade. J. F. Martell & Co. *v.* J. L. Martel & others, C. de Bordeaux, 17 July, 1876, C. de Cass., 27 March, 1877, 22 *Ann. de la Pro.* 94; Same Case below, 21 *Id.* 284.

§ 1217. *Fraudulent imitation.—Papiers Job and Jop.*—The use of the of the word *Jop* is a fraudulent imitation of the trademark *Job*, when the character and color of the letters are the same, and the surrounding designs and inscriptions are similarly arranged. Bardou *v.* Roux, Trib. Corr. de Toulouse, 3 May, 1877, 22 *Ann. de la Pro.* 139.

§ 1218. *Name of manufacturer.—Sale.*—The name of a manufacturer, when used in a peculiar

form as a trademark, (*e.g.*, a copy of the signature) is an object of sale together with the good will and stock of his business, and may be resold by the assignee. Reasoning of court,—the stamp (copy of signature) being the only means of establishing the source of the goods, and of retaining the custom depending upon it, has become, by force of the circumstances, an accessory to the business transferred to Morel—it can, consequently, be a matter of assignment to a second purchaser. Compere *v.* Bajou, C. de Paris, 16 June, 1854, *Upton's Trademarks.*

§ 1219. *Liquors de la grande Chartreuse.*—The liquor generally known as *Chartreuse*, having acquired a great celebrity in France, was extensively imitated. The suits were so numerous that it is considered desirable to group them together irrespective of dates. In 1852, Louis Garnier, head of the convent of the Grande Chartreuse, legally deposited his trademarks and labels. In suit against Rivoire (4 *Ann. de la Pro.* 115), the Tribunal of Commerce of Grenoble decided, December 31, 1852, that Garnier was the sole owner of the liquor known as *Chartreuse*, which takes its name from the place of its manufacture, and enjoined defendants against the use of the title *liqueur de Chartreuse.* Damages were refused, however, because of the tolerance of the monks up to that time. On appeal defendants contended that the word *Chartreuse* had become a generic term to designate the kind of liquor made by the monks of Chartreuse.

The principles announced by the lower court were affirmed by the cour de Grenoble, May 25, 1853, saying, "that the name *Chartreuse*, which was only an abbreviation of the label of the Chartreuse monks,

was not a generic name, such as a name would be which was derived from the nature of the liquor or the substance of which it was composed; that this liquor had been thus named because it had been invented at the monastery of the Grande Chartreuse, and was made there by the Chartreuse monks, so that this name designated at the same time *the inventors, the manufacturers and the place of manufacture*, and it constitutes, under each one of these, a distinctive mark; a name which cannot be applied with truth to a similar or analogous product manufactured at Grenoble by Rivoire frères."

The judgment added that the monks not having a monopoly of their liquor, yet not having made known their process, Rivoire had the right to compound a similar liquor, if he could, and in default of another name to give it one drawn from its similarity even,—such as *Imitation Chartreuse*, on condition that they be written in identical characters, or so that they may not have the effect to turn away the customers of the monks. C. de Grenoble, 23 May, 1852, Garnier *v.* Rivoire, 4 *Ann. de la Pro.* 115.

§ 1219 A. One Berthe, pretending to manufacture his liquors in the Commune of Saint Pierre, in which is the *Grand Chartreuse Monastery*, claimed the right to place on his labels, *liqueur fabriquée à Saint-Pierre de Chartreuse.*

He was adjudged guilty of a violation of law of 1824, and of article 423 of Penal Code, and ordered to pay a fine of 125 francs, and 500 francs damages, with insertion of notice in two newspapers. Garnier *v.* Berthe, Trib. Com. de Grenoble, April 2, 1857, 4 *Ann. de la Pro.* 119.

§ 1219 B. In 1868, numerous suits were brought

against parties in and about Paris, where a trade in spurious *Chartreuse* had sprung up. Five of them are reported at page 226 of the *Annales*, vol. 14 (L. Garnier *v.* Ludière and others), another (L. Garnier *v.* Paul Garnier) at p. 252, *Id.*

The same cases on appeal are reported at p. 353, *Id.* Some of the defendants reproduced the label of plaintiffs, but added in characters almost imperceptible the words, *Imitation of the*, and name or initials of the distiller. Another reproduced the label with the exception of *Grande Chartreuse*, in place of which was printed *Grande Chevreuse* in the same characters. Another substituted *Liqueur hygiénique de la Grande Chartreuse*, printed in two lines, in place of *Grande Chartreuse*, the remainder of label being similar. Defendants sought to establish their good faith, and the absence of any real damage, resulting from the long tolerance of the monks, and from the difference in price of the true and imitation liquors, and the differences of labels.

It was held in these cases, according to the circumstances of each, that there is an infringement of a trademark (article 7 of law of 1857), the moment that the intention to imitate results in the reproduction of the trademark with only such differences as are due to imperfect workmanship. Also that the offense of fraudulent imitation (article 8, law of 1857), may exist though the fraudulent mark would not necessarily deceive all purchasers; consequently the indication of the name of the manufacturer or even the substitution of another name for the product, is not sufficient to remove the offense.

That the manufacturer who sells products with labels in imitation of those of another manufacturer,

is, equally with the retail dealer, liable to the penalties established by the law, although the substitution of his (the manufacturer's) name forbids the belief that the retail dealers to whom he delivered his goods had been personally deceived as to their nature or origin.

That it is not necessary to establish that the retailers at whose stores these products were seized have deceived one or more consumers. It is sufficient that the mark or label be in its entirety of the kind to deceive a certain number of purchasers. Garnier *v.* Ludiére, *Id. v.* others, C. de Paris, November 25, and December 30, 1868, 14 *Ann. de la Pro.* 353.

§ 1219 C. In 1869 an action was brought against one Maitre whose labels had the same general appearance as those of the monks, but also important differences. They were of the same size, shape and color, and the inscription was arranged in the same way, but, 1st, instead of being round, the darkened pearls which form the frame-work, were alternately round and oblong; 2nd, in place of LIQUEUR FABRIQUÈE À LA GR^DE CHARTREUSE, was read, LIQUEUR FABRIQUÉE COMME À LA GR^DE CHARTREUSE; 3rd, in place of the signature L. Garnier with the globe surmounted by a cross, they bore the signature Gullifet et Ce. In 1859, Gullifet & Co. deposited this mark as required by law. Defendant being a retailer plead good faith. *Held* the defendant's mark was calculated to deceive buyers, and cause those who were not attentive at the instant of purchase to believe that the contents of these bottles was a product of the Convent of the Grande Chartreuse. Defendant was condemned to pay a fine of 100f. and 300f. damages to plaintiffs (article 8, law of 1857). Garnier *v.* Maitre, Trib.

Corr. de la Seine, January 27, 1859, 15 *Ann. de la Pro.* 87.

§ 1219 D. In the decisions previously given (1219 B, case of Garnier *v.* Garnier), the court decided that the word *Chartreuse* was the name of a certain kind of liquor, and did not, by itself, indicate the place of manufacture, and its usurpation did not, therefore, come under law of 1824.

Paul Garnier, after the decision of 1868, modified his labels by replacing the darkened pearls, which had been objected to, by a solid frame work, and substituting in place of his former title the words *liqueur chartreuse fabriquée par P. Garnier.* Soon after he issued a second edition, and added at the bottom of the label *Noyon* (Oise)—his residence. In a third kind of label, larger than the other, with no framework, he placed the word CHARTREUSE, in large characters with his signature and the word NOYON.

In court of first instance, *Held* that the title *Chartreuse* was a generic name, given to a certain kind of liquor invented by the Chartreuse monks; that it had been for a long time in common use, and did not indicate by itself the place of manufacture. On appeal, *Held* that the name of *Chartreuse*, applied to liquor compounded at the Grande Chartreuse, is not a generic name, such as a name derived from the nature and composition of the liquors, but an abbreviation of the labels of the Chartreuse monks, indicating at once the inventor, the manufacturer and the place of manufacture.

Therefore, it is a usurpation of name of place of manufacture, under law of 1824, for a manufacturer to use the word Chartreuse to designate a liquor

more or less similar to that of the convent of the Grande Chartreuse.

It is so even though the labels used by the manufacturer differs from that of the monks, and indicates a different place of manfacture. Louis Garnier *v.* Paul Garnier, C. de Paris, 5 February, 1870, 16 *Ann. de la Pro.* 209; Same Case, again reported, 17 *Id.* 249. Affirmed by Court of Cassation, 26 April, 1872, *Id.* 257.

§ 1219 E. The action detailed in 1219 D was in the criminal court. A civil action was also brought on same state of facts.

Held, that the ownership of a title or a mark is acquired by the first use of it, independently of any deposit. Consequently, although the deposit is necessary as a prerequisite to an action under the law of 1857 the use previous to the deposit which a manufacturer or merchant has made of a title or of a mark, cannot be pleaded as causing it to fall into common use. No more can the unpermitted use of it by a third person be pleaded.

The title *Chartreuse*, employed by the Chartreuse monks to designate the liquor made by them at the Grand Chartreuse, is their exclusive property, indicating at the same time the manufacturer and the place of manufacture.

Therefore the Chartreuse monks have an action to enjoin all other manufacturers or dealers against the use of the words *Chartreux* or *Chartreuse* to designate liquors or elixirs not coming from the Grande Chartreuse. Louis Garnier *v.* Paul Garnier, C. de Paris, 19 May, 1870, 16 *Ann. de la Pro.* 219; Same Case again reported, 17 *Id.* 241.

The preceding judgment was followed in case of

L. Garnier *v.* Martin, Trib. Civ. de la Seine, 31 May, 1870, 16 *Ann. de la Pro.* 229.

§ 1219 F. When a manufacturer has adopted complex trademarks, it is sufficient to sustain an action that he has deposited his principal trademarks from which the former were made up. Therefore, one is liable to the penalties fixed by article 8 of law of 1857, who has used one or more elements of the deposited marks, although the mark used, such as the stamp on the corks of bottles, has not been made the special and distinct subject of deposit, if otherwise its use is of a kind to deceive buyers as to the origin of the product. Appeal from Tribunal correctionnel. Grezier *v.* Chedeville, C. de Paris, 11 June, 1875.

APPENDIX

CONTAINING

UNITED STATES TRADEMARK STATUTES; RULES OF PRACTICE AND OFFICIAL FORMS IN TRADEMARK CASES IN THE UNITED STATES PATENT OFFICE; STATUTE, RULES AND OFFICIAL FORMS FOR THE REGISTRATION OF PRINTS AND LABELS AND TRADEMARK TREATIES AND CONVENTIONS WITH THE UNITED STATES.

UNITED STATES TRADEMARK STATUTES.

TRADEMARKS.

TITLE LX, Rev. Stat., chap. 2, p. 963:

SEC. 4937. *Registration of trademarks authorized.**—Any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which by treaty or convention affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trademark, or who intend to adopt and use any trademark for exclusive use within the United States, may obtain protection for such lawful trademark by complying with the following requirements:

First. By causing to be recorded in the Patent Office a statement specifying the names of the parties, and their residences and place of business, who desire the pro-

* 8 July, 1870, c. 230, s. 77, v. 16, p. 210.

tection of the trademark; the class of merchandise, and the particular description of goods comprised in such class, by which the trademark has been or is intended to be appropriated; a description of the trademark itself, with fac-similes thereof, showing the mode in which it has been or is intended to be applied and used; and the length of time, if any, during which the trademark has been in use.

Second. By making payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents.

Third. By complying with such regulations as may be prescribed by the Commissioner of Patents.

SEC. 4938. *Accompanying declaration under oath.**—The certificate prescribed by the preceding section must, in order to create any right whatever in favor of the party filing it, be accompanied by a written declaration verified by the person, or by some member of the firm or officer of the corporation by whom it is filed, to the effect that the party claiming protection for the trademark has a right to the use of the same, and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; and that the description and facsimiles presented for record are true copies of the trademark sought to be protected.

SEC. 4939. *Restriction on the registration of trademarks.*†—The Commissioner of Patents shall not receive and record any proposed trademark which is not and cannot become a lawful trademark, or which is merely the name of a person, firm, or corporation, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trademark appropriate to the same class of merchandise and belonging to a different owner, and already registered or received for registration, or which so nearly resembles

* 8 July, 1870, c. 230, s. 77, v. 16, p. 210.
† Ibid., s. 79, p. 211.

such last-mentioned trademark as to be likely to deceive the public. But this section shall not prevent the registry of any lawful trademark rightfully in use on the eighth day of July, eighteen hundred and seventy.

SEC. 4940. *Time of receipt of trademark for registration to be certified.**—The time of the receipt of any trademark at the Patent Office for registration shall be noted and recorded. Copies of the trademark and of the date of the receipt thereof, and of the statement filed therewith, under the seal of the Patent Office, certified by the Commissioner, shall be evidence in any suit in which such trademark shall be brought in controversy.

SEC. 4941. *Duration of protection of registered trademark, and renewal.*†—A trademark registered as above prescribed shall remain in force for thirty years from the date of such registration; except in cases where such trademark is claimed for and applied to articles not manufactured in this country and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this act at the same time that it becomes of no effect elsewhere. Such trademark during the period that it remains in force shall entitle the person, firm, or corporation registering the same to the exclusive use thereof so far as regards the description of goods to which it is appropriated in the statement filed under oath as aforesaid, and no other person shall lawfully use the same trademark, or substantially the same, or so nearly resembling it as to be calculated to deceive, upon substantially the same description of goods. And at any time during the six months prior to the expiration of the term of thirty years, application may be made for a renewal of such registration, under regulations to be prescribed by the Commissioner of Patents. The fee for such renewal shall be the same as for the original registration; and a cer-

* 8 July, 1870, c. 230, s. 80, p. 211.
† Ibid., s. 78, p. 211.

tificate of such renewal shall be issued in the same manner as for the original registration; and such trademark shall remain in force for a further term of thirty years.

SEC. 4942. *Remedy for infringement of registered trademarks.**—Any person who shall reproduce, counterfeit, copy, or imitate any recorded trademark, and affix the same to goods of substantially the same descriptive properties and qualities as those referred to in the registration, shall be liable to an action on the case for damages for such wrongful use of such trademark, at the suit of the owner thereof; and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trademark and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful use.

SEC. 4943. *Restriction upon actions for infringement.*†—No action shall be maintained under the provisions of this chapter by any person claiming the exclusive right to any trademark which is used or claimed in any unlawful business, or upon any article which is injurious in itself, or upon any trademark which has been fraudulently obtained, or which has been formed and used with the design of deceiving the public in the purchase or use of any article of merchandise.

SEC. 4944. *Penalty for false registration of trademarks.*‡—Any person who shall procure the registry of any trademark, or of himself as the owner of a trademark, or an entry respecting a trademark in the Patent Office, by making any false or fraudulent representations or declarations, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such registry or entry to the person injured thereby; to be recovered in an action on the case.

* 8 July, 1870, c. 230, s. 79, v. 16, p. 211.
† Ibid., s. 84, p. 212.
‡ Ibid., s. 82.

SEC. 4945. *Former rights and remedies preserved.**—Nothing in this chapter shall prevent, lessen, impeach, or avoid any remedy at law or in equity, which any party aggrieved by any wrongful use of any trademark might have had if the provisions of this chapter had not been enacted.

SEC. 4946. *Saving as to rights after expiration of term for which a trademark has been registered.*†—Nothing in this chapter shall be construed by any court as abridging or in any matter affecting unfavorably the claim of any person to any trademark after the expiration of the term for which such trademark was registered.

SEC. 4947. *Regulations for transfer of rights to trademarks.*‡—The Commissioner of Patents is authorized to make rules, regulations, and prescribe forms for the transfer of the right to the use of trademarks, conforming as nearly as practicable to the requirements of law respecting the transfer and transmission of copyrights.

AN ACT

To punish the counterfeiting of trademark goods and the sale or dealing in of counterfeit trademark goods.

Approved August 14th, 1876.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATESOF AMERICA IN CONGRESS ASSEMBLED.—*Penalty for selling or offering for sale goods bearing a fraudulent trademark.*—That every person who shall with intent to defraud, deal in or sell, or keep or offer for sale, or cause or procure the sale of, any goods of substantially the same descriptive properties as those referred to in the registration of any trademark pursuant to

* 8 July, 1870, c. 230, s. 83, v. 16, p. 211.
† Ibid., s. 78.
‡ Ibid., s. 81.

the statutes of the United States, to which, or to the package in which the same are put up, is fraudulently affixed said trademark, or any colorable imitation thereof, calculated to deceive the public, knowing the same to be counterfeit or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or imprisonment not more than two years, or both such fine and imprisonment.

SEC. 2. *Penalty for affixing fraudulent trademark.*—That every person who fraudulently affixes, or causes or procures to be fraudulently affixed, any trademark registered pursuant to the statutes of the United States, or any colorable imitation thereof, calculated to deceive the public, to any goods of substantially the same descriptive properties as those referred to in said registration, or to the package in which they are put up, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this act.

SEC. 3. *Penalty for putting up packages bearing fraudulent trademark.*—That every person who fraudulently fills, or causes or procures to be fraudulently filled, any package to which is affixed any trademark, registered pursuant to the statutes of the United States, or any colorable imitation thereof, calculated to deceive the public, with any goods of substantially the same descriptive properties as those referred to in said registration, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this act.

SEC. 4. *Manufacturing fraudulent trademark.*—That any person or persons who shall, with intent to defraud any person or persons, knowingly and willfully cast, engrave, or manufacture, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any die or dies, plate or plates, brand or brands, engraving or engravings, on wood, stone, metal, or other substance, moulds, or any

false representation, likeness, copy, or colorable imitation of any die, plate, brand, engraving, or mould of any private label, brand, stamp, wrapper, engraving on paper or other substance, or trademark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this act.

SEC. 5. *Dealing in fraudulent trademark.*—That any person or persons who shall, with intent to defraud any person or persons, knowingly and willfully make, forge, or counterfeit, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any representation, likeness, similitude, copy, or colorable imitation of any private label, brand, stamp, wrapper, engraving, mould, or trademark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this act.

SEC. 6. *Possession of empty box or package having registered trademark with intent to defraud.*—That any person who shall, with intent to injure or defraud the owner of any trademark, or any other person lawfully entitled to use or protect the same, buy, sell, offer for sale, deal in or have in his possession, any used or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed, so that the same may be obliterated without substantial injury to such box or other thing aforesaid, any trademark, registered pursuant to the statutes of the United States, not so defaced, erased, obliterated, and destroyed as to prevent its fraudulent use, shall, on conviction thereof, be punished as prescribed in the first section of this act.

SEC. 7. *Proceedings to detect fraudulent trademark. Jurisdiction of United States courts.*—That if the owner of any trademark, registered pursuant to the statutes of the United States, or his agent, make oath, in writing, that he has reason to believe, and does believe, that any counterfeit dies, plates, brands, engravings on wood, stone, metal,

or other substance, or moulds of his said registered trademark, are in the possession of any person, with intent to use the same for the purpose of deception and fraud, or makes such oaths that any counterfeits or colorable imitations of his said trademark, label, brand, stamp, wrapper, engraving on paper or other substance, or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed said registered trademark not so defaced, erased, obliterated, and destroyed as to prevent its fraudulent use, are in the possession of any person, with intent to use the same for the purpose of deception and fraud, then the several judges of the circuit and district courts of the United States and the commissioners of the circuit courts may, within their respective jurisdictions, proceed under the law relating to search-warrants, and may issue a search-warrant authorizing and directing the marshal of the United States for the proper district to search for and seize all said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, and said counterfeit trademarks, colorable imitations thereof, labels, brands, stamps, wrappers, engravings on paper, or other substance, and said empty boxes, envelopes, wrappers, cases, bottles, or other packages that can be found; and upon satisfactory proof being made that said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, counterfeit trademarks, colorable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, are to be used by the holder or owner for the purposes of deception and fraud, that any of said judges shall have full power to order all said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, counterfeit trademarks, colorable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, to be publicly destroyed.

SEC. 8. *Penalty for abetting violation of preceding sections.*—That any person who shall, with intent to defraud any person or persons, knowingly and willfully aid or abet in the violation of any of the provisions of this act, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or imprisonment not more than one year, or both such fine and imprisonment.

UNITED STATES PATENT OFFICE.—RULES IN TRADEMARK CASES.

TRADEMARKS.

84. *Trademarks, how to secure them.*—Any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which, by treaty or convention, affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trademark, or who intend to adopt and use any trademark for exclusive use within the United States, may obtain protection for such lawful trademark by complying with the following requirements, to wit:

First. Proceeding necessary.—By causing to be recorded in the Patent Office the names of the parties, and their residences and place of business, who desire the protection of the trademark.

Second. The class of merchandise and the particular description of goods comprised in such class, by which the trademark had been or is intended to be appropriated.

Third. A description of the trademark itself, with fac-similes thereof, and the mode in which it has been or is intended to be applied and used.

Fourth. The length of time, if any, during which the trademark has been used.

Fifth. The payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents.

Sixth. The compliance with such regulations as may be prescribed by the Commissioner of Patents.

Seventh. The filing of a declaration, under the oath of the person, or of some member of the firm or officer of the corporation, to the effect that the party claiming protection for the trademark has a right to the use of the same, and that no other person, firm, or corporation has a right to such use, either in the identical form or having such near resemblance thereto as might be calculated to deceive, and that the description and fac-similes presented for record are true copies of the trademark sought to be protected. The oath must also state the citizenship of the person desiring registration.

The petition asking for registration should be accompanied with a distinct statement or specification, setting forth the domicile and residence of the applicant, the length of time the trademark has been used, the mode in which it is intended to apply it, and the particular description of goods comprised in the class by which it has been appropriated, and giving a full description of the design proposed, particularly distinguishing between the essential and the non-essential features thereof.

85. *How long the right may inure.*—The protection for such trademark will remain in force for thirty years, and may, upon the payment of a second fee, be renewed for thirty years longer, except in cases where such trademark is claimed for, and applied to, articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period, in

which case it shall cease to have force in this country, by virtue of the registration, at the same time that it becomes of no effect elsewhere.

86. *Proper subjects for trademarks.*—No proposed trade mark will be received or recorded which is not and cannot become a lawful trademark, or which is merely the name of a person, firm, or corporation only, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trademark appropriate to the same class of merchandise and belonging to a different owner, and already registered or received for registration, or which so nearly resembles such last-mentioned trademark as to be likely to deceive the public; but any lawful trademark rightfully used at the time of the passage of the act relating to trademarks (July 8, 1870) may be registered.

Proceedings in the office.—All applications for registration are considered in the first instance by the Trademark Examiner. From adverse decision by such Examiner upon the applicant's right to registration, an appeal directly to the Commissioner will lie, no fee being charged therefor.

In case of conflicting applications for registration, the Office reserves the right to declare an interference, in order that the parties may have opportunity to prove priority of adoption or right; and the proceedings on such interference will follow, as nearly as practicable, the practice in interferences upon applications for patents.

87. *Fac-similes to be filed.*—Where the trademark can be represented by a fac-simile which conforms to the rules for drawings of mechanical patents, such a drawing may be furnished by applicant, and the additional copies will be produced by the photo-lithographic process, at the expense of the Office. Or the applicant may furnish one fac-simile of the trademark, mounted on a card ten by fifteen inches in size, and ten additional copies, upon flexible paper, not mounted, as in designs, but in all cases the mounted fac-simile or the drawing must be signed by the appli-

cant or his authorized attorney, and the signature must be attested by two witnesses.

88. *Trademarks assignable.*—The right to the use of any trademark is assignable by any instrument of writing, and such assignment must be recorded in the Patent Office within sixty days after its execution, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice. The fees will be the same as are prescribed for recording assignments of patents.

OFFICIAL FORMS.

Petition.

11.—FOR THE REGISTRATION OF TRADEMARK.

To the Commissioner of Patents:

Your petitioner [or petitioners, if a firm] respectfully represents that he [or it, if a corporation] is engaged in the manufacture of ———, at ———, and at ———, ———, and that he is entitled to the exclusive use upon the class of goods which he manufactures of the trademark described in the annexed statement or specification, and illustrated in the accompanying fac-simile.

He therefore prays that he may be permitted to obtain protection for such lawful trademark under the law in such cases made and provided.

A. B.

Specification.

20.—FOR A TRADEMARK.

[*If the application is made by a corporation or a firm this form should be modified to conform to the facts.*]

To all whom it may concern:

Be it known that I, [here insert the name of the appli cant,] domiciled in the [United States, or in the Dominion

of Canada, or, as the case may be,] and residing at ———, and doing business at ———, in the county of ———, and State of ———, have adopted [or intend to adopt] for my use a trademark for ———, of which the following specification is a full, clear, and exact description:

My trademark consists of the letters and words, S. N. & Co.'s Buckeye Sheetings. These generally have been arranged as shown in the accompanying fac-simile; above and below a figure of a man represented as ascending the side of a mountain and carrying a banner, upon which is inscribed the word "Buckeye;" and the whole has been inclosed within an ornamental border substantially like that shown in the fac-simile. But the figure of the man with the banner may be omitted, or some other device substituted for it, and the border may be changed at pleasure or omitted altogether without materially changing the character of my trademark, the essential features of which are the letters S. N. & Co.'s and the word-symbol Buckeye.

This trademark I have used in my business for ten years last past.

The class of merchandise to which the trademark is appropriated is ———; and the particular description of goods [comprised in said class] upon which I use my said trademark are ———. I have been accustomed to print it in blue ink upon each piece of said goods, and also to have it printed on labels, which I afterward paste upon said articles or on boxes and cases containing the same.

A. B.

Witnesses: C. D.
F. H.

30.—DECLARATION OF APPLICANT FOR REGISTRATION OF A TRADEMARK.

[*If the application is made by a corporation, or a firm, this form should be modified to conform to the facts.*]

STATE OF ———, *County of* ———, *ss:*

A. B., being duly sworn, deposes and says that he is the

applicant named in the accompanying petition; that he verily believes that the facts set forth in the foregoing specification are true; that he has a right to the use of the trademark described in said specification; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the description and fac-similes presented for record are true copies of the trademark sought to be protected, and that he is a citizen of the United States, (or, a citizen of the Republic of France, or, as the case may be.)

A. B.

Sworn to and subscribed before me this 15th day of ———, 187–.

E. F.,

Justice of the Peace.

REGISTRATION OF PRINTS AND LABELS.

By an act* of Congress entitled "An act to amend the law relating to patents, trademarks, and copyrights," approved June 18, 1874, (to take effect on and after the 1st day of August, 1874,) it is provided, in the 3d section thereof, that certain prints and labels may be registered in this Office:

SEC. 3. That in the construction of this act the words "Engraving," "cut," and "print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such print or labels, in conformity with the regulations pro-

* See Marsh *v.* Warren, cited at foot of page 517.

vided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label, not a trademark, six dollars, which shall cover the expense of furnishing a copy of the record under the seal of the Commissioner of Patents, to the party entering the same.

SEC. 4. That all laws and parts of laws inconsistent with the foregoing provisions be and the same are hereby repealed.

SEC. 5. That this act shall take effect on and after the first day of August, eighteen hundred and seventy-four.

By the word "print," as used in the said act, is meant any device, picture, word or words, figure or figures, (not a trademark,) impressed or stamped directly upon the articles of manufacture, to denote the name of the manufacturer or place of manufacture, style of goods, or other matter.

By the word "label," as therein used, is meant a slip or piece of paper, or other material, to be attached in any manner to manufactured articles, or to bottles, boxes, and packages containing them, and bearing an inscription, (not a trademark,) as, for example: the name of the manufacturer or the place of manufacture, the quality of goods, directions for use, &c.

By the words "articles of manufacture"—to which such print or label is applicable by said act—is meant all vendible commodities produced by hand, machinery, or art.

But no such print or label can be registered unless it properly belongs to an article of commerce, and be as above defined; nor can the same be registered as such print or label when it amounts to a lawful trademark.

To entitle the owner of any such print or label to register the same in the Patent Office, it is necessary that five copies of the same be filed, one of which copies shall be certified under the seal of the Commissioner of Patents, and returned to the registrant.

The certificate of such registration will continue in force for twenty-eight years.

The fee for registration of a print or label is six dollars, to be paid in the same manner as fees for patents.

The benefits of this act seem to be confined to citizens, or residents, of the United States.

FORM OF APPLICATION FOR REGISTRATION OF PRINTS AND LABELS.

[Making necessary changes to suit each case.]

[FOR AN INDIVIDUAL.]

To the Commissioner of Patents:

The undersigned, A. B., of the city of Brooklyn, county of Kings, and State of New York, and a citizen of the United States, [or resident therein, as the case may be,] hereby furnishes five copies of a label [or print, *as the case may be*,] to be used for ———, of which he is the sole proprietor.

The said label [or "print"] consists of the words and figures, as follows, to wit: [Description.]

And he hereby requests that the said print [or label] be registered in the Patent Office, in accordance with the act of Congress to that effect, approved June 18, 1874.

Proprietor.

BROOKLYN, N. Y., *August* 1, 1874.

[FOR A CORPORATION.]

To the Commissioner of Patents:

The applicant, a corporation created by authority of the laws of the State of New York, [or other authority, as the case may be,] and doing business at ———, in said State, hereby furnishes five copies of a label, [or "print," *as the case may be*,] to be used for ———, of which it is the sole proprietor.

The said label consists of the words and figures as follows, to wit: ——— [Description.]

And it is hereby requested that the same label [or print] be registered in the Patent Office, in accordance with the act of Congress to that effect, approved June 18, 1874.

Witness the seal of said corporation at ——, ——, 1874.

[L. S.]

———— ————,

President, [or other officer.]

NOTE.

The registration of copyright matter is, by law, under the control of the Librarian of Congress, at Washington. At the time of the enactment of the trademark law of July 8, 1870, it was the custom of the Librarian of Congress to enter, under the provisions of the copyright law, labels and prints of commerce, many of which embraced legal trademarks. Notwithstanding the existence of a separate statute in 1870 for the registration of trademarks, the Librarian of Congress, in entering labels and prints of commerce, gave a semblance of protection to many trademarks, of which the labels and prints entered by him were the mere vehicles. To remedy this difficulty was the object of the amendment to the copyright law of June 18, 1874, referred to herein as the act for the registration of prints and labels. By this amendatory act the Librarian of Congress is restricted, in the registry of copyright matter, to pictorial illustrations or works connected with the fine arts, and is prohibited from registering labels or prints designed to be used for any other articles of manufacture, *i. e.*, articles of commerce. These are now registrable at the Patent Office; while matter properly coming within the definition of copyright subject matter, as contained in the act of June 18, 1874, is registrable at the office of the Librarian of Congress.*

*The act of Congress of June 18, 1874, is to be regarded as an amendment of the copyright laws. To acquire a copyright

TREATIES AND CONVENTIONS.

RUSSIA, 1868.

ARTICLE respecting trademarks, additional to the Treaty of Navigation and Commerce of December 6-18, 1832, between the United States of America, and His Majesty the Emperor of Russia, concluded at Washington, January 27, 1868; ratification advised by Senate, July 25, 1868; ratified by President, August 14, 1868; ratifications exchanged at St. Petersburgh, September 21, 1868; proclaimed, October 15, 1868.

The United States of America and His Majesty the Emperor of all the Russias, deeming it advisable that there should be an additional article to the treaty of commerce between them of the 6-18th December, 1832, have for this purpose named as their plenipotentiaries, the President of the United States, William H. Seward, Secretary of the State; and His Majesty the Emperor of all the Russias, the Privy Councillor, Edward de Stoeckl, accredited as his Envoy Extraordinary and Minister Plenipotentiary to the United States.

And the said Plenipotentiaries, after an examination of their respective full powers, which were found to be in good and due form, have agreed to and signed the following

ADDITIONAL ARTICLE.

The high contracting parties, desiring to secure complete and efficient protection to the manufacturing industry of their respective citizens and subjects, agree that any

in any print or label deposited in the Patent Office, it is essential that the title of the print or label be first deposited in pursuance of the provisions of the Revised Statutes, concerning copyrights. 1877, U. S. Circuit Court, Southern Dist. of N. Y., Marsh *v.* Warren, 4 *Am. Law Times R.* (*N. S.*) 126.

counterfeiting in one of the two countries, of the trade-marks affixed, in the other on merchandise, to show its origin and quality, shall be strictly prohibited and repressed, and shall give ground for an action of damages in favor of the injured party, to be prosecuted in the courts of the country in which the counterfeit shall be proven.

The trademarks in which the citizens or subjects of one of the two countries may wish to secure the right of property in the other, must be lodged exclusively, to wit: the marks of citizens of the United States in the Department of Manufactures and Inland Commerce at St. Petersburgh, and the marks of Russian subjects at the Patent Office at Washington.

This additional article shall be terminable by either party, pursuant to the twelfth article of the treaty to which it is an addition.* It shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by His Majesty the Emperor of all the Russias, and the respective ratifications of the same shall be exchanged at St. Petersburgh within nine months from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed the present additional article in duplicate, and affixed thereto the seal of their arms.

Done at Washington the twenty-seventh day of Janu-

* The twelfth article of the treaty of December 6-18, 1832, is as follows :

ARTICLE XII.

The present treaty, of which the effect shall extend in like manner to the Kingdom of Poland, so far as the same may be applicable thereto, still continue in force until the first day of January, in the year of our Lord one thousand eight hundred and thirty-nine, and if, one year before that day, one of the high contracting parties shall not have announced to the other, by an official notification, its intention to arrest the operation thereof, this treaty shall remain obligatory one year beyond that day, and so on until the expiration of the year which shall commence after the date of a similar notification.

ary, in the year of Grace one thousand eight hundred and sixty-eight.

WILLIAM H. SEWARD, [L. S.]
EDWARD DE STOECKL, [L. S.]

DECLARATION by and between the United States and the Empire of Russia, respecting previous treaty stipulations in regard to trademarks. Signed March 16-28, 1874.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Declaration concerning trademarks, for the purpose of defining and rendering more efficacious the stipulations contained in the additional article of the 27th of January, 1868, to the treaty of Commerce and Navigation between the United States and the Emperor of Russia of the 18th of December, 1832, was concluded and signed at Saint Petersburg by their respective plenipotentiaries on the 16th-28th day of March, 1874, the original of which Declaration is word for word as follows:

DECLARATION.

The Government of the United States of America and the Government of His Majesty the Emperor of all the Russias having recognized the necessity of defining and rendering more efficacious the stipulations contained in the additional article of the 15th-27th January, 1868, to the Treaty of Commerce and Navigation, concluded between the United States of America and Russia, on the 6th-18th December, 1832, the undersigned, duly authorized to that effect, have agreed upon the following arrangements:

ARTICLE I.

With regard to marks of goods or of their packages, and also with regard to marks of manufacture and trade, the citizens of the United States of America shall enjoy in

Russia, and Russian subjects shall enjoy in the United States, the same protection as native citizens.

ARTICLE II.

The preceding article, which shall come immediately into operation, shall be considered as forming an integral part of the Treaty of the 6th-18th December, 1832, and shall have the same force and duration as the said Treaty.

In faith whereof the undersigned have drawn up and signed the present Declaration, and affixed thereto their seals.

Done in duplicate in the English and Russian languages at St. Petersburg this 16th-28th day of March, 1874.

[SEAL.] MARSHALL JEWELL.
[SEAL.] GORTCHACOW.

And whereas the said Declaration has been duly ratified, and the same, by virtue of a decree of His Imperial Majesty the Emperor of all the Russias, has gone into effect in the Empire of Russia:

Now, therefore, I, ULYSSES S. GRANT, President of the United States, have caused the said Declaration to be made public, to the end that the same, and every clause and part thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-fourth day of November, in the year of our Lord one thou-
[SEAL.] sand eight hundred and seventy-four, and of the Independence of the United States of America the ninety-ninth.

U. S. GRANT.

By the President:

HAMILTON FISH,
Secretary of State.

BELGIUM, 1868.

ADDITIONAL ARTICLE to the treaty of commerce and navigation of July, 17, 1858, between the United States of America and His Majesty the King of the Belgians, relative to trademarks; concluded at Brussels December 20, 1868; ratification advised by Senate April 12, 1869; ratified by President April 18, 1869; ratifications exchanged at Brussels June 19, 1869; proclaimed July 30, 1869.

The President of the United States of America, and His Majesty the King of the Belgians, deeming it advisable that there should be an additional article to the treaty of commerce and navigation of the 17th July, 1858, have for this purpose named as their Plenipotentiaries, namely:

The President of the United States, Henry Shelton Sanford, a citizen of the United States, their Minister Resident near His Majesty the King of the Belgians; and His Majesty the King of the Belgians, the Sieur Jules Vander Stichelin, Grand Cross of the Order of the Dutch Lion, &c., &c., &c., his Minister of Foreign Affairs. Who, after having communicated to each other their full powers, have agreed to and signed the following

ADDITIONAL ARTICLE.

The high contracting parties, desiring to secure complete and efficient protection to the manufacturing industry of their respective citizens, agree that any counterfeiting in one of the two countries of the trademarks affixed in the other on merchandise, to show its origin and quality, shall be strictly prohibited, and shall give ground for an action of damages in favor of the injured party, to be prosecuted in the courts of the country in which the counterfeit shall be proven.

The trademarks in which the citizens of one of the two countries may wish to secure the right of property in the other, must be lodged, to wit: the marks of citizens of the United States at Brussels, in the Office of the Clerk of the

Tribunal of Commerce; and the marks of Belgian citizens at the Patent Office, in Washington.

It is understood that if a trademark has become public property in the country of its origin, it shall be equally free to all in the other country.

This additional article shall have the same duration as the before-mentioned treaty of the 17th July, 1858, to which it is an addition.* The ratifications thereof shall be exchanged in the delay of six months, or sooner if possible.

In faith whereof, the respective Plenipotentiaries have signed the same, and affixed thereto their seals.

Done at Brussels, in duplicate, the 20th of December, 1868.

H. S. SANFORD. [L. S.]

JULES VANDER STICHELIN. [L. S.]

BELGIUM, 1875.

TREATY between the United States of America and His Majesty the King of the Belgians, concerning commerce, navigation and trademarks; concluded March 8, 1875; ratification advised by Senate March 10, 1875; ratified by President March 16, 1875; ratified by King of the Belgians June 10, 1875; ratifications exchanged at Brussels June 11, 1875; proclaimed June 29, 1875.

The United States of America on the one part, and His Majesty the King of the Belgians on the other part, wish-

* The duration of the treaty of the 17th July, 1858, is fixed by the following article thereof, viz:

ARTICLE XVII.

The present treaty shall be in force during ten years from the date of the exchange of ratifications, (ratifications exchanged April 16, 1859,) and until the expiration of twelve months after either of the high contracting parties shall have announced to the other its intention to terminate the operation thereof, each party reserving to itself the right of making such declaration to the other at the end of the ten years above mentioned, and it is agreed that, after the expiration of the twelve months of prolongation, accorded on both sides, this treaty and all its stipulations shall cease to be in force.

ing to regulate in a formal manner their reciprocal relations of commerce and navigation, and further to strengthen, through the development of their interests, respectively, the bonds of friendship and good understanding so happily established between the governments and people of the two countries; and desiring with this view to conclude, by common agreement, a treaty establishing conditions equally advantageous to the commerce and navigation of both States, have to that effect appointed as their Plenipotentiaries, namely: The President of the United States, Hamilton Fish, Secretary of State of the United States, and His Majesty the King of the Belgians, Maurice Delfosse, Commander of the Order of Leopold, &c., &c., his Envoy Extraordinary and Minister Plenipotentiary in the United States: who, after having communicated to each other their full powers, ascertained to be in good and proper form, have agreed to and concluded the following articles:

. . . . . .

ARTICLE XV.

The high contracting parties, desiring to secure complete and efficient protection to the manufacturing industry of their respective citizens, agree that any counterfeiting in one of the two countries of the trademarks affixed in the other on merchandise, to show its origin and quality, shall be strictly prohibited, and shall give ground for an action of damages in favor of the injured party, to be prosecuted in the courts of the country in which the counterfeit shall be proven.

The trademarks in which the citizens of one of the two countries may wish to secure the right of property in the other, must be lodged, to wit: the marks of citizens of the United States, at Brussels, in the office of the clerk of the tribunal of commerce, and the marks of Belgian citizens, at the Patent Office in Washington.

It is understood that if a trademark has become public

property in the country of its origin, it shall be equally free to all in the other country.

ARTICLE XVI.

The present treaty shall be in force during ten years from the date of the exchange of the ratifications, and until the expiration of twelve months after either of the high contracting parties shall have announced to the other its intention to terminate the operation thereof; each party reserving to itself the right of making such declaration to the other at the end of the ten years above mentioned; and it is agreed that after the expiration of the twelve months of prolongation accorded on both sides, this treaty and all its stipulations shall cease to be in force.

ARTICLE XVII.

This treaty shall be ratified, and the ratifications shall be exchanged at Brussels within the term of nine months after its date, or sooner if possibe.

In faith whereof, the respective Plenipotentiaries have signed the present treaty in duplicate, and have affixed thereto their seals at Washington, the eighth day of March, eighteen hundred and seventy-five.

HAMILTON FISH. [SEAL.]
MAURICE DELFOSSE. [SEAL.]

FRANCE, 1869.

CONVENTION between the United States of America and His Majesty the Emperor of the French, concerning trademarks; concluded April 16, 1869; ratification advised by Senate April 19, 1869; ratified by President April 30, 1869; ratifications exchanged at Washington July 3, 1869; proclaimed July 6, 1869.

The United States of America and His Majesty the Emperor of the French, desiring to secure in their respective

territories a guarantee of property in trademarks, have resolved to conclude a special convention for this purpose, and have named as their Plenipotentiaries: the President of the United States, Hamilton Fish, Secretary of State, and His Majesty the Emperor of the French, J. Berthemy, Commander of the Imperial Order of the Legion of Honor, &c., &c., &c., accredited as his Envoy Extraordinary and Minister Plenipotentiary to the United States; and the said Plenipotentiaries, after an examination of their respective full powers, which were found to be in good and due form, have agreed to and signed the following articles:

ARTICLE I.

Every reproduction in one of the two countries of trademarks affixed in the other to certain merchandise to prove its origin and quality is forbidden, and shall give ground for an action of damages in favor of the injured party, to be prosecuted in the courts of the country in which the counterfeit shall be proven, just as if the plaintiff were a subject or citizen of that country.

The exclusive right to use a trademark for the benefit of citizens of the United States in France, or of French subjects in the territory of the United States, cannot exist for a longer period than that fixed by the law of the country for its own citizens.

If the trademark has become public property in the country of its origin, it shall be equally free to all in the other country.

ARTICLE II.

If the owners of trademarks, residing in either of the two countries, wish to secure their rights in the other country, they must deposite duplicate copies of those marks in the Patent Office at Washington, and in the clerk's office of the tribunal of commerce of the Seine, at Paris.

ARTICLE III.

The present arrangement shall take effect ninety days

after the exchange of ratifications by the two governments, and shall continue in force for ten years from this date.

In case neither of the two high contracting parties gives notice of its intention to discontinue this convention, twelve months before its expiration, it shall remain in force for one year from the time that either of the high contracting parties announces its discontinuance.

ARTICLE IV.

The ratifications of this present arrangement shall be exchanged at Washington within ten months, or sooner if possible.

In faith whereof, the respective Plenipotentiaries have signed the present convention in duplicate, and affixed thereto the seal of their arms.

Done at Washington, the sixteenth day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

HAMILTON FISH. [SEAL.]
BERTHEMY. [SEAL.]

AUSTRIA, 1871.

CONVENTION between the United States of America and His Majesty the Emperor of Austria, relative to trademarks; concluded at Vienna November 25, 1871; ratification advised by Senate January 18, 1872; ratified by President January 27, 1872; ratifications exchanged at Vienna April 22, 1872; proclaimed June 1, 1872.

The United States of America and His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary, desiring to secure in their respective territories a guarantee of property in trademarks, have resolved to conclude a special convention for this purpose, and have named as their Plenipotentiaries:—

The President of the United States of America, John Jay, their Envoy Extraordinary and Minister Plenipotentiary from the United States to His Imperial and Royal Apostolic Majesty; and His Majesty the Emperor of Austria and Apostolic King of Hungary, the Count Julius Andrássy of Csik Szent Király and Kraszna Horka, His Majesty's Privy Counsellor and Minister of the Imperial House and of Foreign Affairs, Grand Cross of the Order of St. Stephen, &c., &c., &c., who have agreed to sign the following articles:

ARTICLE I.

Every reproduction of trademarks which, in the countries or territories of the one of the contracting parties, are affixed to certain merchandise to prove its origin and quality, is forbidden in the countries or territories of the other of the contracting parties, and shall give to the injured party ground for such action or proceedings to prevent such reproduction, and to recover damages for the same, as may be authorized by the laws of the country in which the counterfeit is proven, just as if the plaintiff were a citizen of that country.

The exclusive right to use a trademark for the benefit of citizens of the United States in the Austro-Hungarian Empire, or of citizens of the Austro-Hungarian Monarchy in the territory of the United States, cannot exist for a longer period than that fixed by the law of the country for its own citizens. If the trademark 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 two contracting parties.

ARTICLE II.

If the owners of trademarks, residing in the countries or territories of the one of the contracting parties, wish to secure their rights in the countries or territories of the other of the contracting parties, they must deposit duplicate copies of those marks in the Patent Office at Wash-

ington, and in the Chambers of Commerce and Trade in Vienna and Pesth.

ARTICLE III.

The present arrangement shall take effect ninety days after the exchange of ratifications, and shall continue in force for ten years from this date.

In case neither of the high contracting parties gives notice of its intention to discontinue this convention twelve months before its expiration, it shall remain in force one year from the time that either of the high contracting parties announces its discontinuance.

ARTICLE IV.

The ratifications of this present convention shall be exchanged at Vienna within twelve months, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed the present convention as well in English as in German and Hungarian, and have affixed thereto their respective seals.

Done at Vienna the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and seventy-one, in the ninety-sixth year of the Independence of the United States of America, and in the twenty-third year of the reign of His Imperial and Royal Apostolic Majesty.

JOHN JAY. [L. S.]
ANDRÁSSY. [L. S.]

GERMAN EMPIRE, 1871.

CONVENTION between the United States of America and the German Empire, respecting Consuls and Trademarks; concluded at Berlin December 11, 1871 ; ratification advised by Senate January 18, 1872 ; ratified by President January 26, 1872 ; ratifications exchanged at Berlin April 29, 1872 ; proclaimed June 1, 1872.

The President of the United States of America and His

Majesty the Emperor of Germany, King of Prussia, in the name of the German Empire, led by the wish to define the rights, privileges and immunities, and duties of the respective Consular Agents, have agreed upon the conclusion of a Consular Convention, and for that purpose have appointed their Plenipotentiaries, namely :

The President of the United States of America, George Bancroft, Envoy Extraordinary and Minister Plenipotentiary from the said States, near His Majesty the Emperor of Germany ; His Majesty the Emperor of Germany, King of Prussia, Bernard König, His Privy Councillor of Legation ; who have agreed to and signed the following articles :

* * * * * * *

ARTICLE XVII.

With regard to the marks of labels of goods, or of their packages, and also with regard to patterns and marks of manufacture and trade, the citizens of Germany shall enjoy in the United States of America, and American citizens shall enjoy in Germany, the same protection as native citizens.

ARTICLE XVIII.

The present convention shall remain in force for the space of ten years, counting from the day of the exchange of the ratifications, which shall be exchanged at Berlin within the period of six months.

In case neither party gives notice, twelve months before the expiration of the said period of ten years, of its intention not to renew this convention, it shall remain in force for one year longer, and so on, from year to year, until the expiration of a year from the day on which one of the parties shall have given such notice.

In faith whereof the Plenipotentiaries have signed and sealed this Convention. Berlin, the 11th of December, 1871.

[L. S.] GEO. BANCROFT.
[L. S.] B. KOENIG.

ENGLAND.

We are informed that a treaty is being negotiated between England and the United States.

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