

## ROYAL BAKING POWDER CO. v. DAVIS and others.

*(Circuit Court, E. D. Michigan. November 5, 1885.)*

1. **TRADE-MARK**—"ROYAL BAKING POWDER"—"CORAL BAKING POWDER."  
The words "Coral Baking Powder," in connection with the color of the label on which they appear, and the general appearance of the cans bearing the label, are calculated to deceive the public, although in themselves they are no infringement on the trade-mark "Royal Baking Powder."
2. **SAME—INJUNCTION, THOUGH NO INFRINGEMENT.**  
Injunction granted to restrain the use of the words "Coral Baking Powder," the same being calculated, in connection with a similarity in the labels and cans, to mislead the public into mistaking the one for the other.

In Equity.

*Isaac Marston*, for plaintiff.

*John D. Conely*, for defendant.

**BROWN, J.** This is a bill in equity for the infringement of plaintiff's trade-mark, which consists of the words "Royal Baking Powder," used in connection with labels of a particular design and color, applied to the cans containing the article manufactured by plaintiff.

The defendants make use of cans of precisely the same size and shape, to which are affixed labels of the same colors and general design as those of the plaintiff, with the words "Coral Baking Powder" thereon. The answer avers "that the shape and size of the can described in the bill is a common mercantile article in the market, and is made by different manufacturers for holding baking powders;" that "the colors on the labels are also in common use by baking powder manufacturers;" and denies that the colors and devices mentioned in the bill, in combination with each other, or with any other matter or thing, constitute a trade-mark. The labels used by defendants' firm are similar to those used by the plaintiff in their color, and to the extent that one-half of the label has a red ground with white letters and the other half a yellow ground with black letters. The corner ornamentations upon the red half are the same, but the words upon this ornamentation differ. The word "Royal" on plaintiff's red ground is in good-sized letters. The word "Coral" on defendants' is in larger letters. In the center of plaintiff's red ground the ornamentation is a picture of a Royal baking powder can in a circle. In the center of defendants' red ground is a circle containing therein the words "Trade-mark," with a large picture below of a piece of coral.

I do not think the use of the words "Coral Baking Powder" is in itself an infringement of plaintiff's trade-mark,—*"The Royal Baking Powder."* The difficulty is with the similarity of the labels upon which the words are used. The general arrangement of the words being the same, the devices upon the cans being very much alike, and the labels of the same color and general appearance, I think purchasers might be very easily deceived into buying the one

for the other. The injunction, then, will not extend to the use of the words "Coral Baking Powder," but to their use in connection with cans and labels of the same general appearance as those of the plaintiff.

---

CITIZENS' NAT. BANK *v.* WERT and others.

(Circuit Court, D. Indiana. November 23, 1885.)

1. MORTGAGE—SUBSTITUTION OF MORTGAGEE.

When a secured obligation has become due, the debtor may, by an agreement, without the consent of the creditor, substitute, in place of the latter, another person, who pays such creditor the amount due upon the obligation.

2. SAME—RIGHTS AND POWERS OF FIRST MORTGAGEE.

A mortgagee cannot, by executing and recording a release, without consent, cut off the rights of a person who pays the obligation at its maturity, under an agreement with the mortgagor that he shall be substituted in the place of such mortgagee.

3. SAME—RIGHT OF THE SECOND MORTGAGEE TO OBJECT.

The holder of a second mortgage cannot object to the substitution, in place of the prior mortgagee, of a party who, by agreement with the debtor, pays to such prior mortgagee the full amount due him upon the maturity of the obligation.

In Equity. Exceptions to master's report.

*Harris & Calkins*, for complainant.

*S. M. Shepard*, for defendants Wert.

*McDonald, Butler & Mason*, for defendants Robertson & Perry.

WOODS, J. Bill and cross-bills to foreclose three mortgages by their respective owners. The first and more important question to be considered is one of subrogation, or rather of conventional substitution, and arises upon the following facts: The defendant Lillian E. Wert, in June, 1877, accepted a conveyance of real estate, subject to a mortgage to the Middlesex Banking Company, of Connecticut, for \$500, which she assumed to pay, and at the same time executed to her vendor, Russell, a second mortgage for \$400, balance of purchase money; and this mortgage, which was not recorded, is owned by the Citizens' National Bank. In April, 1879, Mrs. Wert made a third mortgage upon the same property to Robertson & Perry, partners, to secure the payment of two notes of her brother to R. & P., one for \$340 and the other for \$345, due, respectively, in two and three years from date. In April, 1882, the first-named mortgage had become due; and, being without means to pay it, Mrs. Wert applied to Edwin A. Wert, brother of her husband, and agreed with him that he should loan to her the money necessary to make the payment, and should hold and keep alive the mortgage as security for the repayment of the loan. Accordingly, Edwin A. Wert furnished and paid the money to the agent of the mortgagee, who