

haustive, and satisfactory, and his reasoning so convincing, that no further discussion can be desired. I feel that I can add nothing of interest, or that will give additional force, to the argument, and but for the great importance of the case, and the wide-spread public interest manifested in it, I should have remained silent. Without further observations, therefore, I concur in the conclusions on the material points reached, in the line of reasoning by which they are established, and in the decree ordered.

As the case was argued and submitted during the life-time of complainant, who has since deceased, the decree will be entered *nunc pro tunc*, as of September 29, 1885, the date of its submission, and a day prior to the decease of complainant.

ANHEUSER-BUSCH BREWING ASS'N v. CLARKE.

(Circuit Court, D. Maryland. January 20, 1886.)

TRADE-MARK—INFRINGEMENT—INJUNCTION.

Where a manufacturer has applied a peculiar and distinctive label to designate his goods, and has so used it that his goods are identified by it, a court of equity will restrain another party from adopting and using one so similar that its use is likely to lead to confusion by purchasers exercising the ordinary degree of caution which purchasers are in the habit of exercising with respect to such goods.

In Equity. On motion for preliminary injunction.

Rowland Cox, for motion.

Wm. Pinkney Whyte, for defendant.

MORRIS, J. The general rule of law applicable to this case is that if a manufacturer has applied a peculiar and distinctive label to designate his goods, and has so used it that his goods are identified by it, a court of equity will restrain another party from adopting and using one so similar that its use is likely to lead to confusion by purchasers exercising the ordinary degree of caution which purchasers are in the habit of exercising with respect to such goods. *McLean v. Fleming*, 96 U. S. 245.

The complainant's affidavits show that the complainant was the first to use for bottled beer a label with a diagonal red band, with the name of the kind of beer appearing in white letters on the red band, and that he has been habitually using this label for two years. The label is a very noticeable and distinctive one by reason of the diagonal red band. The result of the effect upon the eye from seeing a number of bottles is that it is a beer labeled with a diagonal red band, and the more frequently one sees it the more this one effect is deepened. It does appear altogether probable that a consumer who had been used to getting bottles labeled with complainant's label would

more and more rely on the diagonal red band as its distinctive mark, and would be likely to accept the respondent's beer with his diagonal red label on it as supplying what he was in the habit of getting. There is nothing in the differences in the labels calculated to counteract this, and I think it is a strong case of a similarity likely to deceive.

The respondent's statements and explanations of how he came to hit upon this label for his own use are not satisfactory. It appears that it was suggested to him by a bottler in Washington, named Christian Abner, who was a rival of a bottler of complainant's beer, and using complainant's label in that same city, named Edward Abner. Nothing is shown by the affidavits to repel the suspicion which naturally arises that the subsequent adoption of such a very similar label by one of the two rivals in the same city could not be accidental, but must have been for the purpose of confusion.

On the case, as shown by the affidavits, I think the complainant is entitled to the injunction as prayed.

RAILWAY REGISTER MANUF'G Co. v. NORTH HUDSON Co. R. Co. and others.¹

(Circuit Court, D. New Jersey. January 13, 1886.)

1. EQUITY PRACTICE—APPLICATION FOR REHEARING—DISCRETION.

An application for a reargument is addressed to the discretion of the court, and the exercise of such discretion is not willful, but is governed by certain well-established principles.

2. SAME—GROUNDS FOR REHEARING.

The grounds on which courts ordinarily grant rehearings are (1) upon allegation that any question decisive of the case, and duly submitted by counsel, has been overlooked by the court; and (2) that the decision is in conflict with an express statute, or with a controlling decision, either overlooked by the court, or to which attention was not drawn, through neglect or inadvertence of counsel.

3. SAME—INSUFFICIENT GROUND FOR REHEARING.

The allegation that one defense was not fully presented at the original hearing is no ground for rehearing.

4. PATENTS FOR INVENTIONS—COMBINATION OF OLD PARTS, WHEN PATENTABLE.

A combination of old elements is patentable, where a new and useful result is produced by their joint action, or an old result in a cheaper or otherwise more advantageous manner.

On Application for Reargument.

Frost & Coe, for application.

Dickerson & Dickerson, contra.

NIXON, J. This is an application for the reargument of the above case, upon the same testimony, and under the same circumstances,

¹Reported by Charles C. Linthicum, Esq., of the Chicago bar.