

dissolved, which is supposed to have the therapeutic effect attributed to the preparation. In describing this medicine, therefore, it was not essential to mention the base of the phosphate, for that is not important, but the substantially important description was given when it was stated to be a liquid acid phosphate. It seems to me, therefore, that in view of the statements contained in the original registration of the trade-mark and in patent No. 75,732, the complainant can hardly be heard to say that the words "acid phosphate" were then regarded as arbitrary and meaningless, and not as intentionally descriptive of what was considered to be the essential characteristics of the preparation. While a court of equity should regard with disfavor, and seek to remedy, invasions of proper trade-marks, and to rebuke all unfair dealing by which the goodwill earned by one trader is unlawfully pirated by another, care must be exercised that protection is not granted to the appropriation of descriptive names in such manner that a perpetual monopoly is created in the article described, in favor of those who have no exclusive right to manufacture it. *Canal Co. v. Clark*, 13 Wall. 311.

The counsel for defendants have also submitted an argument based upon the right, after a patent has expired, which any one has, to use the name which the inventor has given to a new patented article, and by which it has become generally known. Complainant, however, insists that the defense is not raised by the answer, and that there is no testimony to show that complainant's preparation was made under the patent No. 75,272, granted to Horsford. I have not found it necessary to consider or pass upon this question, resting my decision upon the inherent objection to the words themselves, which prevents their lawful appropriation as a trade-mark.

There being no deceptive similarity in defendants' labels and packages, and nothing complained of except the use of the words "acid phosphate," in my judgment, the bill must be dismissed.

DEVINE v. THE TIVERTON.¹

(*District Court, E. D. New York. June 11, 1888.*)

ADMIRALTY—PRACTICE—TRIAL—NON-PRODUCTION OF EVIDENCE.

Claimant laying stress upon the presumption arising from the fact that the hatch-cover, which libelant asserted had broken under his weight, and which the proofs showed was in his possession, had not been produced on the trial, it was held, that the case should be kept open, with liberty to libelant to produce in court the hatch-cover in question, and with liberty to both sides to take further evidence regarding the same.

In Admiralty.

Noah Tebbets, for libelant.

¹Reported by Edward G. Benedict, Esq., of the New York bar.

Butler, Stillman & Hubbard, for claimant.

BENEDICT, J. On reading the briefs presented in this case, I observe that great stress is laid by the claimant upon the non-production by the libelant of the hatch-cover, which the libelant asserts broke under his weight, and which the proofs show to be in his custody, or under his control. If my recollection serves me, the production of the hatch-cover was tendered by the libelant at the trial; and it seems to me more conducive to justice to have it produced, instead of leaving the case to be decided upon the assertion of the libelant that the hatch-cover broke under his weight, on the one hand, and the presumption that if produced it would show the contrary, on the other. This case is held open, with leave to the libelant to produce the hatch-cover in question, and with liberty to both sides to present any evidence regarding the same as they may be advised.

EUBERWEG v. LA COMPAGNIE GENERALE TRANSATLANTIQUE.¹

District Court, E. D. New York. June 5, 1888.)

DEPOSITIONS—FOREIGN WITNESS—INTERPRETER—DUTY OF STENOGRAPHER.

Witnesses for respondent were being examined through an interpreter, and, a difference arising as to the accuracy of the translation, respondent's proctor announced that the answers would be written down as translated by him, and the stenographer, on being appealed to by libelant's proctor, announced that he would do as respondent's proctor directed. Libelant's proctor thereupon withdrew, and the examination was completed in his absence. On motion to suppress the depositions, *held*, that libelant's proctor was justified in withdrawing, and the motion should be granted, even though it appeared that the depositions were not eventually taken in the manner complained of by libelant's proctor.

In Admiralty. On motion to suppress depositions as irregularly taken.

Biddle & Ward, for libelant.

Coudert Bros., for respondent.

BENEDICT, J. This is a motion to suppress certain depositions. It is made on behalf of the libelant. There is a difficulty with the motion, arising out of the fact that the depositions complained of have not been filed, and that they are not mentioned with particularity. The depositions complained of were taken under these circumstances: Notice of taking the depositions of certain witnesses was given, and the proctors on both sides attended, and the taking of the depositions commenced. The witnesses were unacquainted with the English language, and were examined through an interpreter. A difference seems to have arisen as to the accuracy of the translations made, and the proctor for the claimant an-

¹ Reported by Edward G. Benedict, Esq., of the New York bar.