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LABELS AS SUBJECTS OF COPYRIGHT.

The Commissioner of Patents in insisting of his power to rule as to labels and trade-marks, deciding whether the matter for registration is one or the other, seems to consider that both are the subjects of the same or parallel statutes. He acts as if it were his office to divide all marks of designation into two classes, according to some special classification called for by law. On inspection of the statutes no such state of things can be found to exist. Trade-marks derive their standing in the United States courts from enactments under the eighth section of the Constitution of the United States. We give that part which they are referred to: "Sec. 8. Congress shall have power . . . to regulate commerce with foreign nations, and among the several States and with the Indian tribes." The trade-mark act of March 3, 1881, confines its protection to "owners of trade-marks used in commerce with foreign nations or with the Indian tribes." This restriction was inserted to make the act constitutional, as the old act of 1870 had been declared invalid. As it stands it is the authority for the registration of trade-marks in the Patent Office, and has nothing to do with labels.

The law on the subject of trade-marks is very well defined, and is illustrated by many important decisions. Thus the characteristics of a trade-mark are fixed. It must be non-descriptive and arbitrary; otherwise the statute will not apply. The Commissioner of Patents, following the numerous decisions of the courts, exacts this feature before admitting any mark to this kind of registration. He acts properly in doing this, as he is guided by and follows the decisions of the judges of the highest courts.

The *status* of labels is widely different; they are protected as subjects of copyright. Another clause of the same eighth section of the Constitution authorizes the different copyright acts. We quote as before the part relating to this subject: "Sec. 8. The Congress shall have power . . . to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." For many years it had been the practice for registrants of labels to register them with the Librarian of Congress, the proper officer, under the old copyright acts. By the act of June 18, 1874, it was provided that ". . . prints or labels designed to be used for any other articles of manufacture" (than pictorial illustrations or works connected with the fine arts) ". . . may be registered in the Patent Office."

It seems as if there were room for much doubt as to whether this act is constitutional. It appears doubtful if a mere label should be protected under a clause of the Constitution designed to secure to *authors* "the right to their respective writings." The inscriber of his own name upon a box of matches would hardly be an author in the sense of the Constitution, and a designating label could not well be considered a writing in the same sense. Much might be said on this point. Yet by statute such protection is accorded, and the Commissioner has nothing to do with the constitutionality or the reverse of these acts.

The Librarian of Congress had under the old practice no power to decide that anything presented for registration was a trade-mark. He had to accept everything that was offered, and could not consider the arbitrary or fanciful nature of a label a bar to its registration. The powers of the Commissioner of Patents in the matter of labels are inherited from the Librarian of Congress under the act of 1874. It seems perfectly clear, therefore, that he exceeds his power in refusing to register anything in the shape of a label because it may be also a trade-mark.

A less technical view may be taken of the case. Leaving aside all court decisions, it is perfectly clear that anything affixed to an article to designate or distinguish it is a label. A trade-mark is defined by law, but a label is not. The Patent Office in its use of Webster's definition of a label as their standard acknowledges this as far as the label is concerned. No technical limitation has been placed on it. It stands as a comprehensive term, including many subdivisions, and among them that of trade-marks. Thus, while anything registrable as a trade-mark should be registrable as a label, the reverse does not hold. The greater includes the less, and the label includes the trade-mark.

For a most clear and interesting statement of the case, we refer our readers to the decision in Willcox & Gibbs S. M. Co. versus E. M. Marble, given by the Supreme Court of the District of Columbia. Although decided on November 30, 1881, it was not published in the *Official Gazette* of the Patent Office until Oct. 17, 1882. The present Commissioner, for some reason, refuses to abide by this decision. What precedent he has for disregarding such an authority does not appear. His predecessor bowed to it, and changed the practice of the office to conform thereto.

NOW IS THE TIME.

"Now is the time to invest in tools and machinery," said a prominent manufacturer of tools and machines a short time ago. "We are making to lay up a stock," he said, "and are keeping our men on the prospects of future sales, instead of paying them from the profits of contracts already made." This company could afford to pay hands and store up a stock of finished work, as it had done before; but the manufacturer chose rather to sell at a low price than to pay insurance and the expense of the unavoidable deterioration of finished goods kept in stock. Lower prices and better terms—where terms are offered—can be obtained now than at any time within two or three years. Most men engaged in business requiring manufacturing machinery or machine tools can anticipate their ordinary needs for a twelvemonth hence, and so can make their preparations for the reflux tide of demand that is as certain to come as is the spring to succeed to winter. Every period of depression in business has been followed by a corresponding uprising, and there is no valid reason for believing that this present season of quietude is to sink into one of stagnation. At all events, a business, to live at all, must have the means, and there appear to be good reasons for advising the purchasing or the contracting for of machine tools and manufacturing machinery now, while in those branches of business there is a temporary lull.

ANOMALIES OF THE SEWING-MACHINE BUSINESS.

IT was John Stuart Mill, we believe, who established the principle that public confidence could neither be stemmed nor directed by statute, and, perhaps, there has rarely been so apt an illustration of this as is to be had in the experience of the original sewing-machine companies. The original sewing-machine patents expired, as is well known, in 1876, and long before that time preparations were afoot to take advantage of the principle, now become common property. Capitalists invested their money freely, great factories were erected, and doubtless many had already figured out their prospective profits for the year when the time to begin the work of manufacturing was at hand and the great struggle began.

There is reason to believe that the original patentees were not a little frightened at the prospect. Indeed, in certain quarters "stampede" would more accurately describe the condition of affairs when the market became "flooded" with sewing-machines, and prices fell to a point at which there was little or no profit, with a premonition that thereafter sewing-machines were to be given away.

This state of affairs had not, however, long continued before the original companies discovered that they were selling about as many machines as before their patents expired, and that, better still, there was a numerous class that did not want the new makes on any conditions; whereat they plucked up their courage.

The fact is, these companies had for years been striving to turn out a finished, efficient, and durable sewing-machine. They would seem to have dealt fairly with their patrons, whose confidence subsequent events proved that they possessed. These patrons became accustomed to the mechanism of a certain kind of sewing machine, and they would have no other. Furthermore, they unconsciously acted as agents for their favorite machine among their friends and acquaintances. All this and more the old companies learned, and, like sensible business men, they no longer tried to sell for a dollar what had cost them one hundred cents.

Do what they would, the new companies, though, no doubt, in some cases turning out an excellent machine, could not get a foothold in the market, and one by one became bankrupt or went out of business. The fact is, this sewing-machine business is phenomenal, and has characteristics which, there is reason to believe, do not obtain elsewhere. As the wandering tribes of equatorial Africa take with them their own idols, nor can be persuaded to worship other gods, though shown to be more potent, so those who have adopted a certain type of sewing-machine cannot, it seems, easily weaned from their choice.

So too in the matter of ornamentation; the type of machine being once decided upon, the purchaser is credited with a disposition to put up with nothing less than all the other exterior arrangements for convenience, and it is stated upon good authority, that a certain class of machines being once fitted with a movable top and three drawers, no patroness, however poor, will thereafter, whatever the extra cost, be contented without them.

A psychological fact, possibly new, which has come to light in this sewing-machine business is that a woman will rather pay $50 for a machine in monthly installments of five dollars than $25 outright, although able to do so.

The curious processes of reasoning by which the feminine mind is led to regard the lapse of time as a cheapener and a hundred per cent. interest as of no consequence, have not yet, we believe, been discovered.

Seriously, the principal original or parent companies are yearly increasing their sales and realizing a fair profit without any patent rights save these pertaining to certain recent improvements. Nine of the newer companies have gone out of business since 1877, and of the forty remaining not a few exist in little else but the name; the field being monopolized by the old established ones or those which, long before the expiration of the sewing-machine patents, had secured the confidence of a large and growing constituency.

This being the case, it may not, perhaps, prove uninteresting to review the sewing-machine field. Elias Howe's sewing-machine, though by no means the first made or used either here or in Europe, was patented in 1846; A. B. Wilson's, 1848; I. M. Singer's, 1851; Grover and Baker's, 1851; the Weed, Finkle & Lyon and Parham, 1854; the Florence, 1855. From 1857 to the present day there have been only a few really new type machines patented, the principal ones being the Willcox & Gibbs, the Empire, the Ætna, the Domestic, and the Victor. In all, since 1846 over two thousand patents have been issued on sewing-machines and their different parts and on sewing-machine attachments.

The machines are best classed by the kind of stitch produced. Four-fifths of all the machines now made use the lock-stitch; according to the last census, there are in the United States to-day 106 sewing-machine establishments,

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