

Transcriptions of the Court Records of Washington Medallion Pen Co. vs. George Harrison, George Bradford, et. al.

1866 Summary of the Judgement

In Supreme Court

As a Special Term of the Supreme Court held in and for the City and County of New York on the 12th day of April 1866

Presiding Noah Davis, Justice of said court

The Washington Medallion Pen Company

Agst

Eberhard Faber

James B. Hodgskin

George Harrison &

George Bradford

This cause having been reached in its owner on the calendar was moved for trial the plaintiffs appearing there by Abbett & Fuller their Attys and counsel, and the defendants by John Townsend and Wm. Fullerton their Attys and counsel; and the said Court having heard the proofs and allegations of the respective parties, hereby finds and decides the following facts and conclusions of law in said cause.

1st That the plaintiffs are a corporation organized in the year 1857 under the laws of this state for the purpose of manufacturing and vending steel pens; that ever since their organization they have been largely engaged in manufacturing and selling steel pens called and known as "the Washington Medallion Pen", in the manufacture and sale of which, the plaintiffs have established and carried on a large and extensive business in the City of New York and throughout the United States

2nd: That at the time of this organization the plaintiffs because, and ever since have bee the owners of, and entitled to the right to manufacture and sell the aofresaid pen as against all parties who had theretofore manufactured and sold the same, that at that time the said plaintiffs adopted and took the said words or phrase "Washington Medallion: as their trade-mark, and as the name by which the pens of their manufacturer should be known to the trade, and to the public, and distinguished from pens made and sold by other manufacturers; and stamped and impressed said trade mark upon the pens manufactured by them, and the packages and wrappers in which the same were put up. That for the purpose of introducing said pen to the trade, and to the public by the name and trade mark aforesaid the

[missing lines]

the advertising and otherwise bringing the same to public notice, and acquired an extended and valuable reputation for their said pens, under the distinctive name and trade mark as aforesaid. And the said pen became known to the trade and the public by the name and trade mark as aforesaid and were and are ordered by dealers by such name, whereby the said trade mark became and was of great value to the said plaintiffs and said plaintiffs at all times had and enjoyed the exclusive use and benefit of said trade mark until the time hereinafter mentioned.

3rd That on or about the month of March 1864 the defendants George Harrison and George Bradford who were partners in business under the firm name of Harrison & Bradford, (and who under such firm name has previously manufactured said steel pens for and in account of said plaintiffs as their agents and servants, and under contract made with them on behalf of said plaintiffs) commenced to manufacture pens in all respects like and similar to the pens made and sold by said plaintiffs and for the purpose of trade in said pens, which said plaintiffs had established as aforesaid, said def(endan)ts wrongfully adopted the said trade mark of the said plaintiffs, and stamped and impressed on their said pens the words "Washington Medallion Pen", and as the packages and wrapping in which the same were put up. (which were made similar in form and size, and appearance to those used by the plaintiffs) caused to be put the same words, with intent to secure to themselves the benefits and advantages of the trade which said plaintiffs had secured in their said pen; and to induce dealers in pens, and the public at large, to purchase pens of the manufacturer of said defendants under the belief that they were the Washington Medallion Pen manufactured by said plaintiffs, and thereby did and have induced dealers and the public to believe that pens manufactured by said defendants were the pens made by said plaintiffs and known as "The Washington Medallion Pen", and to purchase the same as such.

And the said defendants Faber & Hodgskin who are dealers in steel pens in said City of New York have, ever since the said year 1864, dealt in and sold large quantities of said pens so manufactured by said defendants Harrison & Bradford, put up in packages and wrappers similar to those used by the plaintiffs, and with the said trade mark of said plaintiffs stamped and impressed thereon, whereby dealers in pens and the public at large have been induced to purchase the same under the belief that they were buying the genuine pens of the manufacture of said plaintiffs.

4th That by the wrongful acts of the said defendants the said plaintiffs have been interfered with and greatly misused (?) in their said business, and wrongfully deprived of the use and enjoyment of their aforesaid trade mark by the said defendants as above set forth, and of the benefit and advantage thereof - and as conclusions of law the said court decides -

1st That the said plaintiffs are entitled to the use and exclusive enjoyment of the words or phrase "Washington Medallion" as their trade mark in the said business, and are entitled to have judgment against the said defendants forever enjoining and restraining them, and each of them, from using and enjoying the said words

[missing lines]

Manufactured and sold by them, or on the packages and wrappers in which the same are put up or in any other manner in connection with pens made or sold by them.

2nd That plaintiffs are also entitled to recover the damages sustained by them by reason of the wrongful acts of said defendants, and that it be referenced to E. N. Cowles(?) Esq., a counsellor of this court, to assess and report such damages, and that said defendants render an account before him as shall by him be directed and required of the amount of pens manufactured and sold by them with the said trade mark of said plaintiffs upon them, and upon the wrappers and packages as aforesaid, and that each party be at liberty to produce witnesses and proofs before said referee, touching such damages, as they may be advised; and that upon the coming of the report of such referee, and upon the same and upon the footing of this decision, and the judgment to be entered hereon, the said plffs[sic] be at liberty to move for such judgment and decree as shall be just and equitable.

3rd That said plaintiffs have judgment against said defendants accordingly with costs of suit to be adjusted.

Sept. 14th 1866 Noah Davis
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Supreme Court
In Supreme Court

As a Special Term of the Supreme Court held in and for the City and County of New York on the 12th day of April 1866

Presiding Noah Davis, Justice of said court

1864 Plaintiff's Complaint

New York Supreme Court - City and County of New York

The Washington Medallion Pen Company

Against

Eberhard Faber

James B. Hodgskin

George Harrison

George Bradford

I. The plaintiff for a complaint herein, alleges that it is a corporation duly created and doing business under the laws of the State of New York.

II. That the defendants George Harrison & George Bradford are copartners doing business in the City of New York under the firm name of Harrison & Bradford. The defendant Eberhard Faber is doing business in New York

III. That for many years past it has been extensively engaged in manufacturing Steel pens, and vending them in large quantities in the City of New York and elsewhere in the United States. That its steel pens are, and for many years have been put up for sale in paper boxes in the following manner.

First An outside paper box, open only at both ends, so another paper box can be pushed entirely through it, or left inside of, and enveloped by the first.

Second A paper box above referred to open at the top only

Third Six small paper boxes fitting in and completely occupying the entire space of the second box just above described. The six small boxes being of the same form of construction as the large box that contains them. Viz a small box sliding into an envelope or case; On and about these boxes are various labels hereafter particularly described. Each of the six small boxes contained twenty four steel pens, and on each pen is stamped the words "Washington Medallion Pen" and also a raised head of Washington within an oval raised rim.

IV. That in the year 1856 Albert Granger was engaged in the manufacture of Steel pens, and had designed a pen of a peculiar shape and construction, and having t? on a raised head of Washington surrounded by an oval raised rim. That said Granger procured a patent for said design, and also adopted as a descriptive designation or trade mark for said manufacture the name "Washington Medallion" and said pens since that time as manufactured by or under the direction of said Granger and the plaintiff, have been known to the trade and the public as "The Washington Medallion Pen" That said Granger licensed this plaintiff to use said design and also to use and employ said descriptive designation or trade marks. That the plaintiff commenced the manufacture of said pens in Feby 1857 and at the same time devised and adopted under the license of said Granger, as its trade marks the words "Washington Medallion" and also adopted as its trade marks the various labels and devices of which Exhibits "A" "C" & "E" are specimens. Said Exhibits are annexed to this complaint and made part hereof.

That said words and labels, when adopted were new in design and of unusual appearance, and none like them had been theretofore used, or placed upon steel pens, or on boxes containing the same, and they were the designs and adoption of the plaintiff as aforesaid and were the trade marks adopted and from thenceforth to the present time used by the plaintiff upon the steel pens manufactured by the said plaintiff it and upon the boxes containing the same to designate the steel pens of plaintiffs manufacture, and to distinguish the same from any and all other steel pens in the market, and from that time to the present the plaintiff has used the said words, boxes, devices and labels heretofore mentioned for all the pens of this description and manufactured by this plaintiff

V. [missing text]

VI. That by reason of the care, skill and fidelity with which the plaintiff has conducted the manufacture of said pens for a series of years, its said pens have acquired a great reputation with the trade and the public throughout the United States, and large quantities of the same are constantly required from the plaintiff to supply the regular demand for the consumption of the coun(try) and, that by reason thereof, and the acknowledged excellence of said pens, the words, labels and devices used by plaintiff as aforesaid, have become and are, widely known in the country to the trade and the public, and the same have become known as the distinguishing trade marks of plaintiffs, and are vouchers for their genuiness [sic].

VII. As the plaintiff is advised, and believed, by means of the said several premises it acquired a species of right or property in the exclusive use of its said words, labels, devices, tickets or trade marks, which is a proper subject of protection in Courts of Justice; and that it is also entitled to be protected against any and every attempt of the kind hereafter complained of to pass off and vend in the market as of plaintiff's manufacture, pens not made by or for the plaintiff, but having thereon, and on the boxes containing the same, the words, labels, and devices copied from, or imitating or likely to be mistaken for those of plaintiff.

VIII. That the defendants Harrison & Bradford manufacture and the defendant Eberhard Faber as their agent sells to the trade and the public generally, pens and boxes con

[missing text]

Of this description of pens, and caused the same to be put up for sale in boxes, and arranged exactly like those of plaintiff, and so colored, stamped, and labeled as to resemble exactly the boxes used by the plaintiff; and the pen manufactured and sold by the defendants is an exact imitation of the same article which the plaintiff has been manufacturing as aforesaid and selling in the City of New York, and throughout the United States, for many years before the defendants commenced their fraudulent imitations thereof.

IX. That the general appearance of the spurious article is

[missing text]

In the purchase and sale thereof; and the spurious manufacture can only be distinguished - so exact is the imitation, by a careful examination of the same and by the words "Harrison & Bradford's" being used before the words "Washington Medallion Pen" and the defendants, Harrison & Bradford, in order to deceive and defraud the public and falsely induce them to believe that they have a right to manufacture said pens and use the trade marks of plaintiff have placed upon each box of pens sold, by them, a notice, of which there is a sample headed "Notice" in Exhibit B hereto annexed to which plaintiff refers.

X. That as hereinbefore set forth, said pens are put-up for sale in six small boxes, that rest in and fully occupy a second box, which slides through a third. Plaintiff annexes to this complaint as a part thereof the following exhibits. -

Exhibit "A" which is the label used by plaintiff for enveloping the outer box

Exhibit B which is a label used by defendants for the same purpose

Exhibit C which is a label used by plaintiff for enveloping the sides of the box sliding within the first

Exhibit D which is a label used by the defendants for the same purpose

Exhibit E which is a label used by the plaintiff for enveloping the smaller boxes fitted within the box last above mentioned.

Exhibit F which is the label used by the defendants for the same purpose.

XI. That the defendants are manufacturing and selling said spurious pens as aforesaid as and for the genuine "Washington Medallion Pens" manufactured by or for the plaintiff, in large quantities, and to various parts of the United States, and as the plaintiff is informed and verily believes the defendants intend continuing to manufacture and sell said spurious pens, as and for the pens manufactured by the plaintiff. That the plaintiff is informed and believes that that said words "Washington Medallion" and said labels hereinbefore referred to, used by the defendants Harrison & Bradford on the pens made by them, and on the boxes in which the same are put up for sale, are an imitation of the words and labels used by plaintiff as its trade-marks

Fraudulent intent of deceiving and imposing upon purchasers and consumers who have been and are in the habit of buying and using the pens manufactured by or for the plaintiff called

Eberhard Faber, James B. Hodgskin, George Harrison and George Bradford

The defendants for a joint and several amended answer to the complaint say and each for himself says he denies each and every allegation of the complaint except such allegations as are hereinafter expressly admitted. These defendants admit that the defendants George Harrison and George Bradford are copartners doing business under the firm name of Harrison and Bradford and that the defendants Eberhard and James B. Hodgskin are partners doing business under the name of Eberhard Faber, and that Albert Granger in the year 185? was engaged in the manufacture of steel pens and that he procured a patent for a design of a raised head of Washington and the Raised head of Washington and that ?? With such design are known as "the Washington medallion Pen" and they admit that the defendants Harrison and Bradford manufacture and the defendants Eberhard Faber and James B. Hodgskin sell to the trade and the public pens manufactured by the said Harrison and Bradford, but they do not admit but deny that said pens have the trade marks of the plaintiff or imitations thereof. They admit that exhibit B is a label used by defendants to envelope the box containing the pens sold by them and that exhibit D is a label used by defendants on said box likewise exhibit F and they admit before the commencement of this action said Albert Granger threatened to sue the defendants Harrison and Bradford if they manufactured a pen with the name Washington Medallion impressed thereon.

And for a separate and further defense the defendants say that the plaintiff, if ever it was an incorporated company is not now and was not at the time of the commencement of this action an incorporated company but the same was dissolved by the plaintiff was and remained insolvent for one year prior to the commencement of this action and because the plaintiff for more than one year before the commencement of this action suspended its ordinary and lawful business namely the business of manufacturing steel pens.

Benjamin Galbraith

Defendants Attorney

City and County of New York, so

Eberhard Faber, James B. Hodgskin, George Harrison and George Bradford the defendants above name severally made oath and say several each for himself says the forgoing is true to the knowledge ??? And as to those matters he believes it to be true.

Sworn before me this 1st day of August 1864

Will Kee

Notary Public

George Harrison

George Bradford

Eberhard Faber

Jas B. Hodgskin