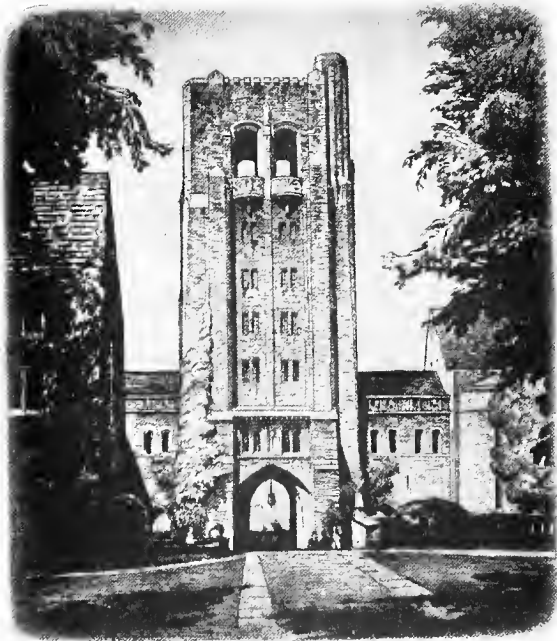


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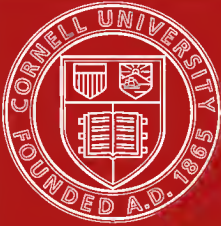
History of the trade-mark "Yale" :issued



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THE GIFT OF

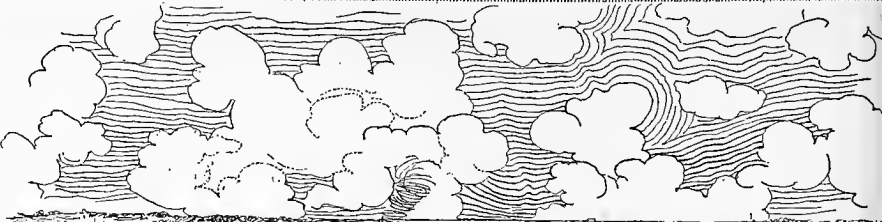
*Gale & Sonne Mfg. Co*  
*New York*

Date, *Apr. 2, 1914*

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Stamford Works  
1914

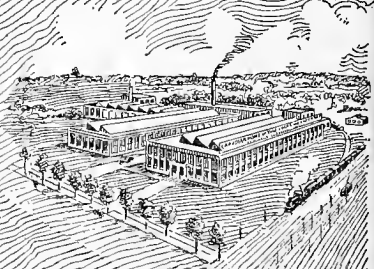
YALE



Stamford Works  
1870



Shelburne Falls  
1860



Canadian Works 1912  
Canadian Yale & Towne Limited  
St. Catharines, Ontario



Newport, N.Y.  
1840



# History of the Trade-Mark “Yale”

*Issued*  
January, 1914

PUBLISHED BY  
THE YALE & TOWNE MANUFACTURING CO.

GENERAL OFFICES:  
No. 9 EAST 40th STREET, NEW YORK  
WORKS: STAMFORD, CONN., U. S. A.

B 3395

FROM THE  
CENTURY DICTIONARY

**Trade-mark:** A distinguishing mark or device adopted by a manufacturer, and impressed on his goods, labels, etc., to indicate the origin or manufacturer.

The foundation of the protection afforded by the law to the owners of trade-marks is in the injustice done to one whose trade has acquired favor with the public if competitors are allowed, by colorable imitation of methods first adopted and continuously used by him for making his products recognizable, to induce intending purchasers to take their goods instead of his.



## *Foreword*

**S**O many cases develop, from time to time, involving encroachment upon our legal rights in trade-marks, catalog numbers, distinctive designs, and other indicia of the origin of our numerous products, as to make expedient the issue of this record of cases in which our rights have been sustained and confirmed, either by adjudication, by default, or by confession.

The purpose in view is one both of enlightenment and of warning; of enlightenment for those who may be ignorant of the law governing the rights in question, and of warning to those who hereafter, wittingly or unwittingly, may encroach upon our legal rights, that we shall in every case vigorously seek to protect them.

To those who sincerely desire to obey the Golden Rule, and to understand what this implies in trade-mark matters, this record will prove enlightening and helpful.

Respectfully,

THE YALE & TOWNE MANUFACTURING Co.

## TRADE-MARK BENEFITS

**A** TRADE-MARK *belongs* to the manufacturer or merchant who originates it, and with whose goods it is identified, but its *benefit* accrues not only to him, but equally or more to his trade customers, the distributors, and to the public, the consumers. The benefit to the distributor consists in an assured market, in quicker sales, in satisfied customers who get what they know and want, and in participation in the results of all advertising by the trade-mark owner. The benefit to the consumer consists in obtaining an article of established quality and repute, which is the same whenever and wherever purchased, of which he knows or may know the fair current price, and which ensures him fair value for the price paid. To an unusual degree all of these qualities inhere in the trade-mark "YALE," and serve to benefit both the distributor and the consumer of YALE PRODUCTS.

## HISTORY OF THE TRADE-MARK

# “YALE”



FIG. 1.  
LINUS YALE, senior.

**T**HE little hamlet of Newport, in Herkimer County, New York, about 12 miles northeast of Utica, was the place where the name “Yale” was first used in connection with locks and hardware, in which connection it is now a household word throughout the civilized world. How that trade-mark acquired its present significance, and became the synonym for “The Yale & Towne Manufacturing Company,” will appear from what follows.

Linus Yale, senior (Fig. 1), born in Middletown, Conn., in 1797, but reared in Herkimer County, N. Y., had a natural talent for mechanics which first bore fruit in improvements in various milling devices, but which led him later into designing and making bank locks, which, in those days, were always operated by keys, and usually were of more or less intricate construction.

It appears that he started as a lock maker about 1840, and that in 1847 he built, in Newport, N. Y., the substantial stone building, still standing, which ever since has been known locally as the “Yale Lock Shop,” and which is shown by the accompanying illustration (Fig. 2). In that year also he brought out a “Yale Bank Lock,” the first of the long line of locks destined to bear that trade-name, which was a masterpiece of ingenuity and which won lasting repute for the name “Yale” as indicative of origin and high quality.

This first “Yale Lock” was made in two forms or models, the “Single”

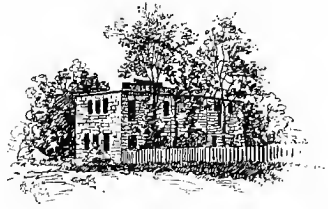


FIG. 2.  
YALE LOCK SHOP, Newport, N. Y.

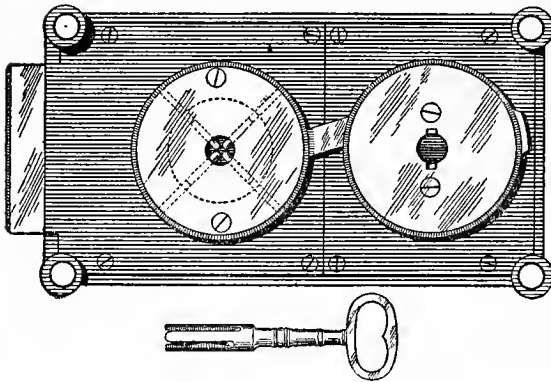


FIG. 3. EARLY YALE BANK LOCK.

and the "Double," the latter being shown by Fig. 3. It was operated by a round fluted key acting upon four sets of pin-tumblers, embodying the principle used thousands of years ago in Egypt (see Fig. 14), but skillfully adapted to modern conditions and needs. The Lock contained four sets of these "pin-tumblers,"

radiating from the keyhole (as shown by the dotted lines in Fig. 3), which were actuated and set by four irregular grooves or "flutes" in the key, these flutes and the pin-tumblers being very accurately adjusted to each other. The "Double" form of this Lock, shown by Fig. 3, contained two of these mechanisms, each controlled by a different key, the one to the right in the picture serving to close and guard the keyhole of the other, so that the key of the latter could not be inserted until the former was unlocked. The "Single" form of this Lock embodied the mechanism shown on the left portion of Fig. 3, its key acting directly on the bolt.

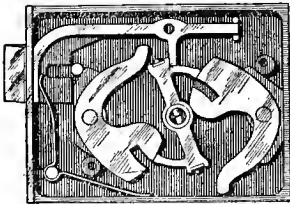


FIG. 4. FIRST YALE RIM NIGHT LATCH.

These Locks were followed in subsequent years by other "Yale Bank Locks," and also by smaller Locks intended for use on the doors of stores, houses, etc., and also on cash drawers. One of these, a Night Latch, is shown by Fig. 4, and another, a Dead Lock, by Fig. 5. Each of these is operated by a "fluted" key acting upon a series of flat lever tumblers which guard the bolt.

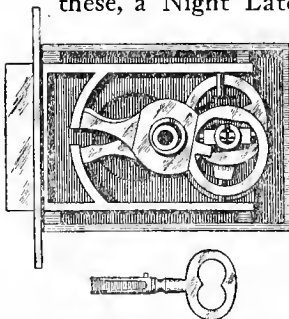


FIG. 5. EARLY YALE STORE DOOR DEAD LOCK.

One of the last Bank Locks made by Linus Yale, senior, is shown by Fig. 6, and is very interesting. In this lock the keyhole is at the back, that is, within the safe or vault, and the lock is operated by two wrenches, permanently fixed in the door and each having a "T" handle on the outside of the door. The lower one

of these, marked "H," can be moved in rotation and also longitudinally. Its inner end carries the arm "A", which in turn carries the key "K." To open the lock the handle "H" is rotated so that the arm stands in the lower position A', and is then pulled forward so that its lower end enters the hole "A" in the door, and projects through the latter. The key "K" is thereupon screwed on to the arm for use. The arm is then pushed back to the position shown in the cut, and rotated to the position "A", whereupon it can be pulled forward so that the key "K" shall enter the keyhole "L" of the lock, thus setting the tumblers to permit the lock to operate. Thereupon the lock is operated by turning the wrench "W," the movement of which is transmitted by gears to the lock mechanism and the bolt. When the lock is locked these movements are reversed, the key "K" returned to the hole "A," and then unscrewed, so that it may be carried away by the person in control of the lock.

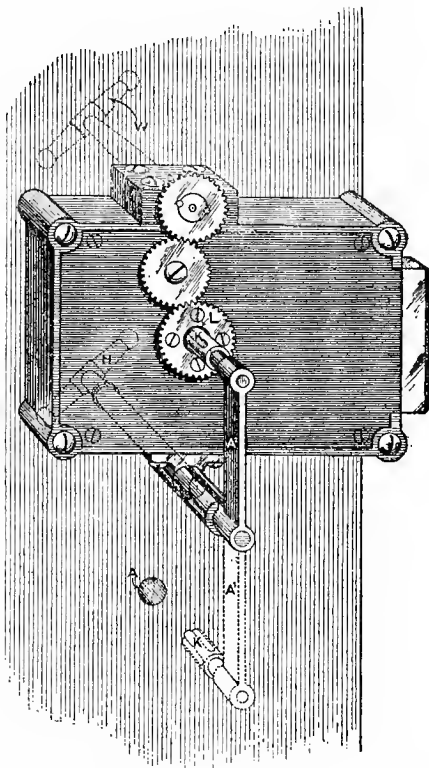


FIG. 6. EARLY YALE BANK LOCK  
(for description see text).

In addition to Bank Locks, Linus Yale, senior, produced a number of locks for use on doors, drawers, etc., all of high security and great mechanical excellence, as well as of much higher cost than the locks then in common use, thus further promoting the repute of the name "Yale," which was always associated with them. He died in 1857.

He was never in partnership with his son, who conducted his business independently. After the death of Linus Yale, senior, the manufacture of Yale locks at Newport, N. Y., was continued by his successors, whose interests were ultimately transferred to The Yale & Towne Manufacturing Company, whose origin and growth are described below.

Linus Yale, junior, his son, born in Salisbury, N. Y., in 1821, began his career as an artist, but soon gave rein to his inherited aptitude for mechanics by following in his father's footsteps as a designer



FIG. 7. LINUS YALE, junior.

and maker of locks. His first essays in this field were in his father's factory, the "Yale Lock Shop" in Newport, N. Y. (Fig. 2), but about 1855, he moved to Philadelphia (where he formed his friendship with William Sellers, referred to later), and started business on his own account. Later, about 1861, he moved to Shelburne Falls, Mass. (Fig. 8), where he lived until his death in 1868.

The son, like the father, devoted himself at first to Bank Locks, which in that day were of intricate construction and high cost, the best locks selling for \$100, \$200, and even \$500 apiece. Lock-picking contests were not infrequent, and the great "Lock Controversy" in England, in 1851, when the American expert Hobbs succeeded in picking, one after the other, all the best English bank locks,

greatly stimulated public interest in the subject, as well as the ambition of rival lock makers.

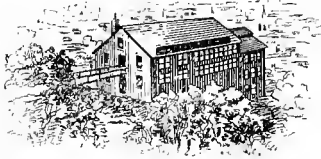


FIG. 8.  
SHOP AT SHELBURNE FALLS, MASS.

Under these influences, Linus Yale, junior (Fig. 7), brought out a series of remarkably ingenious bank locks, each designated by a distinctive name, which are shown by the accompanying illustrations and which may briefly be described as follows:

One of the first of these was the Yale Infallible Bank Lock, shown by Fig. 9 (1851 or 1852). It has a key of the "changeable" that is, a key the component parts of which could be separated and reassembled to change the combination.

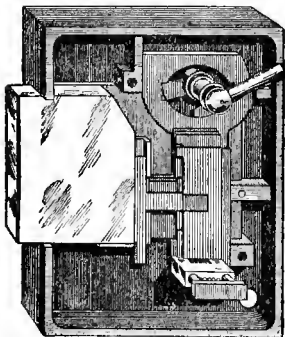


FIG. 9.  
YALE "INFALLIBLE" BANK LOCK.

To use it, it was slipped into engagement with the slide and the latter then pushed forward into the keyhole in the lock, setting the tumblers, and thus permitting the bolt to be moved by the lever handle at the top of the lock. The cut shows the key in place, and the tumblers set ready for the bolt to be withdrawn.

The next in the series was the Yale Magic Bank Lock, shown by Fig. 10 (about 1855-1857), which is a modification of the



"Infallible" lock. In this lock the "pod" of the detachable key is round in shape, and has a series of irregular circular pieces, susceptible of rearrangement to change the combination, and of removal from the key handle or wrench, so that only the "pod" needed to be carried by the person in control of the lock. In operating the lock the "pod" was detached from the handle wrench and carried laterally some two inches to bring it in contact with the tumblers, and this operation also closed the keyhole by a hardened steel slide preventing the introduction of picking instruments into the lock. By the further rotation of the key the "pod" was returned to the wrench, so that it was withdrawn from the lock when the latter was removed.

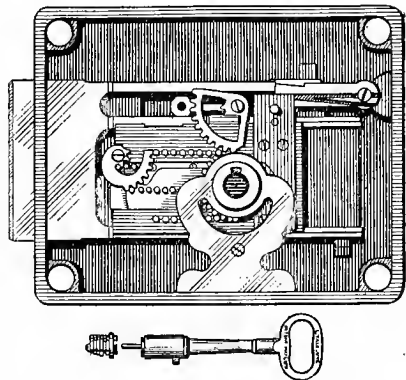


FIG. 10. YALE "MAGIC" BANK LOCK.

The Yale Double Treasury Bank Lock, shown by Fig. 11, is an evolution from the "Magic" lock (Fig. 10), as the latter was from the "Infallible" lock (Fig. 9), and marks the final achievement of the art in the designing of bank locks of intricate mechanism, operated by keys. As explained below, this type of bank lock was soon to yield place to locks of the Dial or Combination type, without key or keyhole. The key of the "Treasury" lock was changeable by the user, was detachable from the wrench or handle, and when in the lock was carried away from the keyhole to make contact with the tumblers. A "disconcerter" was provided to prevent the

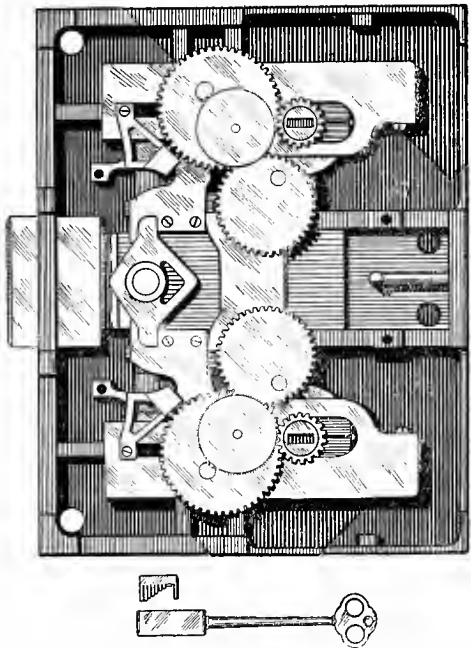


FIG. 11. YALE "DOUBLE TREASURY" BANK LOCK.

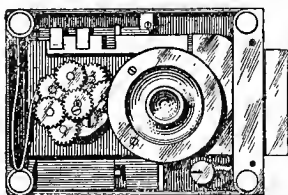


FIG. 12.  
YALE "MONITOR" BANK LOCK.

obtaining of correct impressions of the contact between the key and the tumblers. The "Double Treasury" lock contained two separate mechanisms, each controlled by its own key, and either sufficing to operate the bolt, thus guarding against accidental locking out. The lock was a masterpiece of ingenious design and of skillful workmanship, and some of the principles embodied in it are in use today in locks for safe deposit receptacles.

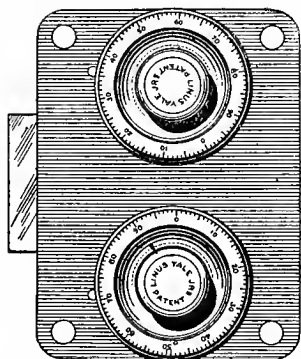


FIG. 13.  
YALE "DOUBLE DIAL" BANK LOCK.  
FRONT.

About 1862, Linus Yale, junior, brought out the Yale Monitor Bank Lock, Fig. 12, which marks the transition from *key* locks to *dial* or *combination* Bank Locks. In this a small crank handle, permanently fixed in the door, transmitted motion to circular tumblers within the lock, whereby these could be set to their respective numbers, whereupon the bolt could be thrown by turning a knob surrounding the spindle of the crank handle. The circular tumblers were changeable.

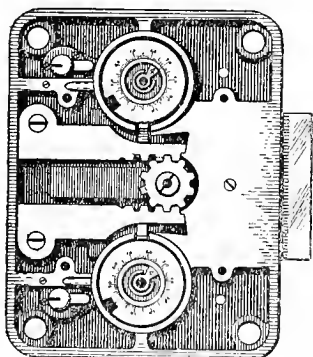


FIG. 14.  
YALE "DOUBLE DIAL" BANK LOCK.  
BACK.

This was soon followed by the Yale Double Dial Bank Lock, Figs. 13 and 14 (about 1863), which embodied the principles of bank lock construction which have since become standard in the United States. It was made both in single and double form. One of the illustrations shows the mechanism of this lock, and the other the appearance of the two "dials" as seen from the front of the door. Each dial controlled a stack of four circular tumblers, each tumbler having one hundred "changes," the total number of possible combinations thus being 100,000,000. The bolt could be operated by either dial, thus giving assurance against a lockout in case of derange-

ment. While dial locks have since been greatly simplified, the essential principles on which they are all based were embodied in this early model.

This long series of brilliant developments, all identified with the name "Yale," added greatly to the prestige it had previously acquired, based on the achievements of the elder Yale, and established firmly its significance and value as a trade-mark identified with lock-making, and indicative of the origin and high quality of the product to which it was applied. Having thus achieved the position of the leading expert and maker of bank locks in America, Linus Yale, junior, began to apply his exceptional talent as a lock expert to the improvement of small or key locks for general uses, in order to avail of the great and growing reputation of the Yale locks by extending it to cover the manufacture

of key locks for all uses where high security was desired. Among the locks which he thus brought out at this time, during the period from 1860 to 1868, was the "Cylinder Lock," embodying the principle of the old pin-tumbler mechanism of the Egyptians, as shown by Fig. 15, in which a wooden key

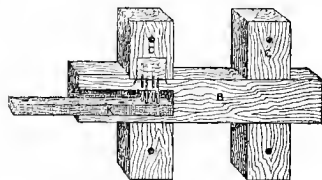


FIG. 15. OLD EGYPTIAN LOCK.

"K," having a series of small iron pins projecting from its surface, was inserted into the end of the bolt "B" and lifted, thus pushing out of the bolt a corresponding series of iron pins contained in the block "C," and permitting the bolt to slide endwise. When the key was withdrawn and the bolt returned to its first position, the movable pins dropped back into engagement with it, thus preventing

its movement until again reset by the proper key. Linus Yale, junior, adapted this pin-tumbler mechanism to modern conditions, producing a lock of high quality and great security, which helped to extend the growing popularity of the word "Yale," as indicating the maker of the highest grade of bank and key locks in America.

Finally, during the last two years of his life, Linus Yale, junior, designed and developed the "metallic front" for Post Office lock boxes, Fig. 16, which is known everywhere as the "Yale Post Office Lock Box," and which is in general use by the United States government and by the governments of nearly all civilized countries. At this time Mr. Yale, realizing that the work of



FIG. 16.  
YALE POST OFFICE LOCK  
BOX—MODEL OF 1868.



FIG. 17. HENRY R. TOWNE.

his earlier years had laid the foundation for a large and successful business, was looking for some one who could organize and develop it, and who could contribute additional capital for that purpose.

Meantime, in another place, another series of events was happening which, although apparently unrelated, was destined to merge with those above referred to and to contribute to the final outcome. In Philadelphia, during the critical period of the Civil War, a young man had begun his career as a student of mechanical engineering in the Port Richmond Iron Works, had worked his way through the drawing room and shops, and finally had been given charge of the erection in place of the machinery of two of the then novel "Monitors," the largest of their class, which machinery the firm had built under contract with the Navy Department and from the designs of Captain John Ericsson. That work was completed in 1865, and thereupon the young man referred to, Henry R. Towne by name, desiring to qualify himself further as a Mechanical Engineer, made a tour of engineering establishments in Europe, studied at the Sorbonne, Paris, took a special technical course under the late Robert Briggs, C.E., and a practical course in the shops of William Sellers & Co., both of Philadelphia, and then began to look for a permanent business connection.

Thus in 1868, Linus Yale, junior, was looking for an associate qualified to organize and manage the manufacturing operations of his business and to contribute additional capital to it, and Henry R. Towne (Fig. 17) was looking for such an opportunity as this implied. The late William Sellers, a noted Mechanical Engineer, and a friend of both, brought them together, and thus contributed to the final result. They met in July, 1868, and, after due negotiation, decided to unite in the

undertaking. In October, 1868, they organized a corporation to conduct the business, selected a site in Stamford, Conn., and began the erection of a modest factory building (which is still in use) (Fig. 18). On December 25, 1868, Mr. Yale died suddenly in New York, before the new enterprise had started on its career. In March, 1869, the new factory being completed, the

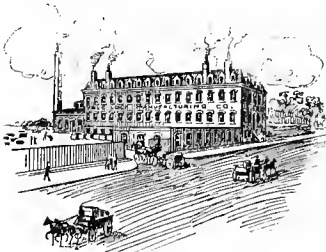


FIG. 18.

SHOP AT STAMFORD, CONN.—1873.

business was transferred to it from Shelburne Falls, Mass., the number of employees being about thirty. In the years which have since elapsed the business has grown steadily and the plant has been enlarged almost annually, to keep pace with it. The latter now occupies upward of twenty acres of ground, well covered with buildings of the most modern and substantial character, and the number of persons employed therein exceeds four thousand. See illustration, page 22.

From the outset Mr. Towne, who succeeded Mr. Yale as President of the Company, realized the great potential value of the trade-mark "Yale" (Fig. 19), and took active measures to extend its use and application. In selecting the name for the new Company the character of its proposed business was indicated by the words "lock manufacturing," prefaced by the word "Yale" in recognition of the achievements with which that name was already identified, the corporate title thus being "The Yale Lock Manufacturing Company," which subsequently, in 1883, was changed to the present form, "The Yale & Towne Manufacturing Company," for reasons which will appear later. Already, however, the name "Yale," in addition to its primary significance as denoting *origin*, had acquired a secondary but equal significance as denoting exceptional experience and skill in lock designing, and the highest *quality* in lock security and construction.

And so, from the commencement in 1869, the policy of the new Company aimed to associate the name "Yale," as a trade-mark indicative both of origin and of high quality, not only with its then chief product, Bank Locks, but with each of its other products, and with new products as added, all of which then consisted exclusively of goods of the highest and most expensive grades, thus continuing and enhancing the prestige which the name had acquired in its association with the products of the business previously conducted by Linus Yale, senior, and Linus Yale, junior. Among the many articles with which it has thus been associated may be mentioned the following as typical, viz.:

Yale Post Office Cabinets: for small Post Offices.

Yale Stamping Tables: for Post Office use.

Yale Inking Pads: for the postal service.

Yale Anodes: for nickel plating.

Yale Drill Presses: for light machine work.

Yale Key-biting Machines: for locksmiths.

Yale Sash-fasts: for protecting windows.

Yale Transom Lifts: for transom sashes.

Yale Automatic Bolt-motors: for safes.

Yale Door Checks: for controlling doors.

Yale Chain Blocks: for hoisting.

Yale Locks: of every type and for every use.

To the original products, comprising Yale Bank Locks, Yale Cylinder Locks and Yale Post Office Lock Boxes, new lines were added from time to time, beginning in 1873, with fine bronze Builders' Hardware, and in 1876, with Chain Pulley Blocks; and sooner or later each of these, as it became standardized and its permanence assured, was admitted to participation in the benefit of the Company's chief trade-mark "Yale," by having that name associated with its descriptive title, to indicate *origin* and *origin-quality*, and by placing that trade-mark on the product itself, so that to-day upward of 30,000,000 of separate articles are annually turned out, each bearing the trade-mark in one of its most usual forms, as shown herewith (Fig. 19).



FIG. 19. FORMS IN WHICH THE TRADE MARK "YALE" OF THE YALE & TOWNE MANUFACTURING COMPANY MOST COMMONLY APPEARS.

One of the earliest additions thus made, about 1879, to the original line of products was Padlocks, and the model then developed (as the result of two years of study and experimenting), known as the No. 853 series of "Standard" padlocks, although very novel in appearance, was so inherently sound in principle and design that to-day, in substantially its original form, it has a very large and increasing sale in all markets of the world, and is still the most popular of the Yale padlocks. Its excellent security is obtained by a set of double acting



FIG. 20.  
YALE "STANDARD"  
PADLOCK NO. 853.

lever-tumblers, and the trade-mark "Yale" is contained in a circular panel on its face. The familiar appearance of this Yale padlock is shown by Fig. 20. Other padlocks were added year after year, some with pin-tumblers, many with lever-tumblers, and some (of cheaper character) with wards, so that the line of Yale Padlocks is now the most extensive in the trade, and covers all sizes, types, and grades.

One of the most widely known and used Yale products is the "Yale Night Latch," for use as a safety lock on entrance and other doors. This also is made in various types, with pin-tumblers, with lever-tumblers, and with wards,

but its most popular form is the No. 42, an early model of which is shown by Fig. 21, and the present model by Fig. 22. The cylinder used with the latter is shown by Fig. 22.

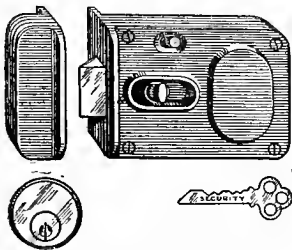


FIG. 21. YALE RIM NIGHT LATCH, NO. 42.—AN EARLY MODEL.

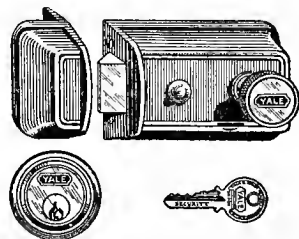


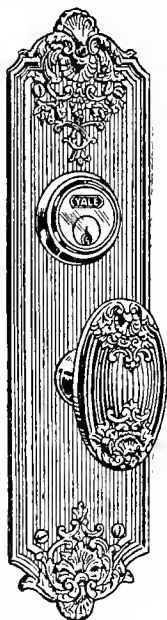
FIG. 22. YALE RIM NIGHT LATCH, NO. 42.—PRESENT MODEL. THE MOST POPULAR NIGHT LATCH IN THE WORLD.

The most extensive line of articles included among the Yale Products is that known as Yale Builders' Hardware. Begun in 1873, this line now embraces almost every article of hardware needed in the equipment of buildings of every class, the variety of articles numbering many thousands, and including not only those of utility, but also an unrivalled series of decorative pieces, in every School of Ornament and in all metals and finishes. A few examples are shown by the plate Fig. 23, on page 18.

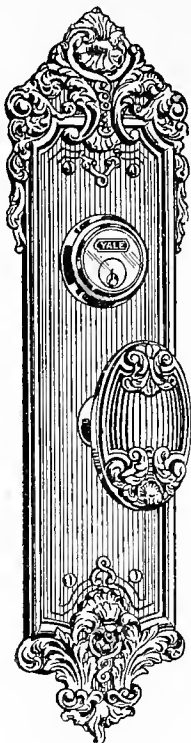
The Yale Products embrace not only Locks and Hardware, but also a complete line of Chain Blocks and Hoists. This latter originated in 1876, by the production of the Yale Differential Pulley Block, followed later by the Yale Duplex Block (screw-gear), and the Yale Triplex Block (spur-gear). Collectively the business in these is the largest of its kind in the world. In this department are also made the Yale Electric Hoists. All of these products are "Safety Appliances," for the safe and economical handling of loads of from one ton, or less, to ten, twenty or even forty tons. Their character is shown by the plate Fig. 24, on page 19.

Because of the increasing diversity of its products the descriptive words "Lock Manufacturing" in the corporate title of the Company had become inappropriate, and therefore, in 1883, by vote of the Board of Directors and an amendment to the charter, the name was changed to its present form, The Yale & Towne Manufacturing Company. At the present time the business embraces eight principal Departments, each covering a different product, as follows, viz.:

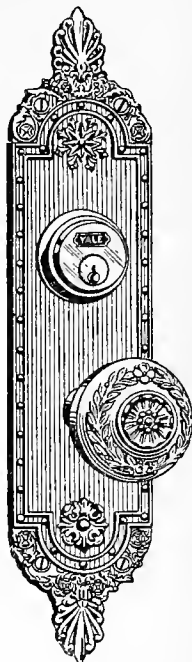
Dept. A, *Yale Builders' Locks and Hardware*. Including every kind of lock, and nearly every article of hardware, required in the equipment of buildings of every kind, from a cottage to a palace.



Louis XV.



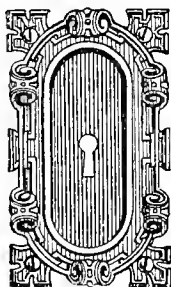
Louis XIV.



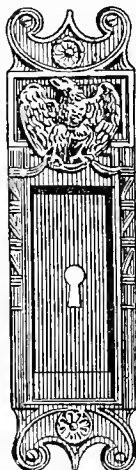
EMPIRE



ADAM



ELIZABETHAN



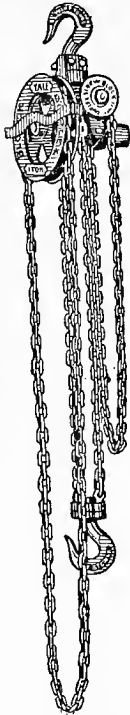
ROMAN

FIG. 23. YALE ORNAMENTAL HARDWARE.

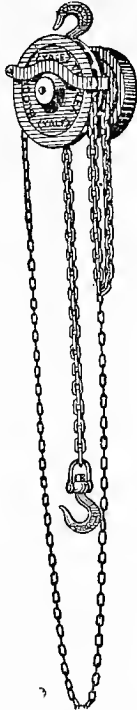




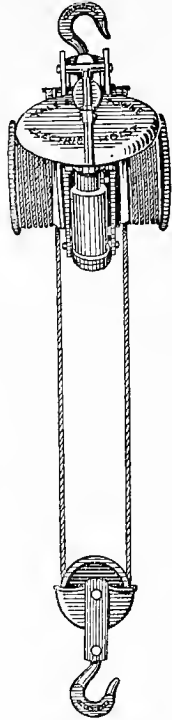
"YALE DIFFERENTIAL  
BLOCK."



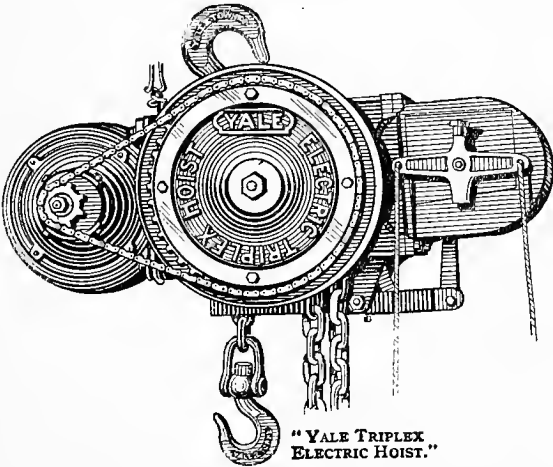
"YALE DUPLEX  
BLOCK."



"YALE TRIPLEX  
BLOCK."



"YALE ELECTRIC  
HOIST."



"YALE TRIPLEX  
ELECTRIC HOIST."

FIG. 24. YALE CHAIN BLOCKS AND ELECTRIC HOISTS.

Dept. B, *Yale Bank Locks*. Including Timelocks, Combination Locks, Safe Deposit Locks, Bolt-work Motors, etc. (Fig. 25).

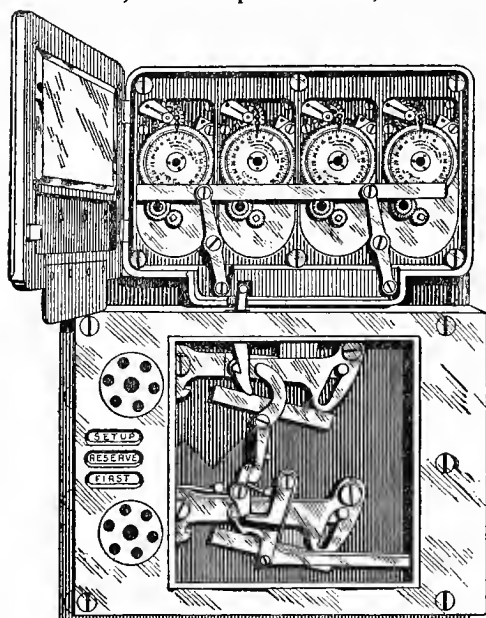


FIG. 25. YALE TIMELOCK—WITH BOLT MOTOR ATTACHMENT.

Dept. C, *Yale Door Checks*. Including single and double-acting overhead Door Checks, Checking Floor Hinges, etc.

Dept. D, *Yale Chain Hoists*. Including Differential, Duplex and Triplex Chain Blocks, Electric Hoists, overhead track and trolleys, etc.

Dept. E, *Yale Post Office Lock Boxes*. Including the various sizes and models used by the United States Government and by numerous foreign Governments.

Dept. F, *Yale Cabinet and Trunk Locks*. Including every variety of small locks used in the Furniture and Trunk trades, and for lockers, automobiles, and other special uses.

Dept. G, *Yale Night Latches*.

Including the most extensive line of Safety Locks for entrance doors, etc.

Dept. H, *Yale Padlocks*. Including a great variety of Padlocks, of all kinds, sizes, and grades.

In addition there are numerous contributive Departments, such as the Iron Foundry, Brass Foundry, Press Shop, Rod Shop, Pattern Shop, Modelling Room, Drawing Office, etc., and a well-organized Welfare Department with an Emergency Hospital.

The commercial headquarters, and the Executive Offices, are contained in a handsome office building, at No. 9 East 40th Street, New York City, erected by the Company for its own use, and the Company operates, through a subsidiary corporation, Canadian Yale & Towne Ltd., a plant at St. Catharines, Ont., employing some 300 people, for the conduct of its business in Canada. It has branch houses in Chicago and San Francisco, and also controls the stock of subsidiary companies for the conduct of its European business in London, Hamburg, and Paris.

All of the large business conducted by means of this extensive organization is identified, in every Department and as to every product,

with the trade-mark "Yale," which for more than seventy years has been the symbol of origin of high-grade bank and key locks of almost every type, and for upward of forty years the symbol of origin of a large group of other products, some related to locks, as in the case of Builders' Hardware, others having no such relation, as in the case of Chain Blocks, but *all* distinguished by excellence in design, construction, and adaptability to their several purposes.

While the line of Yale Locks embraces practically all types of lock mechanisms, and all the staple varieties of form, size, and finish called for in the Hardware, Safe, Furniture, and Trunk trades, it also includes a large and important group of locks of special design which are component parts of the product of other manufacturers, such as those for lockers, for automobiles, for cash registers, for vending machines, for safe-deposit boxes, etc.

How little the public takes note of lock details, and how much it takes note of a well-known trade-mark, may be illustrated by referring to some facts concerning the case last named. Most persons who have valuables rent a safe-deposit box in which to keep securities, etc., and the great majority of them will find upon examining their keys that the latter are marked with the word "Yale," most of the safe-deposit boxes in the country being equipped with Yale Locks.

To the laymen all of these keys may look like those they associate with the familiar "cylinder" lock with pin-tumblers, and some of the keys may belong to locks of that type, but, as a matter of fact, the most popular Yale safe-deposit lock is not of that type and does not embody the "cylinder" principle. On the contrary, it is a lock of the lever-tumbler type, which, while embodying principles which are very old in the art, is practically a reproduction in miniature of the so-called "Yale Double Treasury Lock," manufactured more than sixty years ago by Linus Yale, junior, and used for the protection of Bank Vaults and Safes. An illustration of this lock, famous in its day, appears on page II, Fig. II.

The "good-will" of a manufacturer is one of his most valuable assets. It includes his own reputation, the repute of his product, his trade-mark, and, in many cases, the characteristic design or "dressing" of his goods by which they are identified by the public. The rights thus implied may be violated either by the imitation of *trade-marks* or by the imitation of *product*. The makers of the Yale Products have been forced to defend their rights against attack in both of these forms, and hence the record in the following pages covers two groups of cases, the first those relating to *trade-marks*, and the second those

relating to "*unfair competition*," or "*passing off*," by which latter terms the law designates cases where one manufacturer so closely simulates the style and appearance of articles made by another as to mislead or deceive the public as to the origin of the goods.

While always reluctant to invoke the protection of the law, the Yale & Towne Manufacturing Company, as shown by the record herein, has been compelled to do so in many cases by the attempts, sometimes insidious, sometimes flagrant, of competitors to appropriate for their own benefit the prestige enjoyed by its trade-name YALE, and to deceive the public by misleading marks and other indicia designed to aid in palming off the goods of other makers as YALE PRODUCTS. Whenever and wherever it discovers further attacks of this kind upon its legal rights it will proceed promptly and vigorously to seek the fullest protection which the law affords.

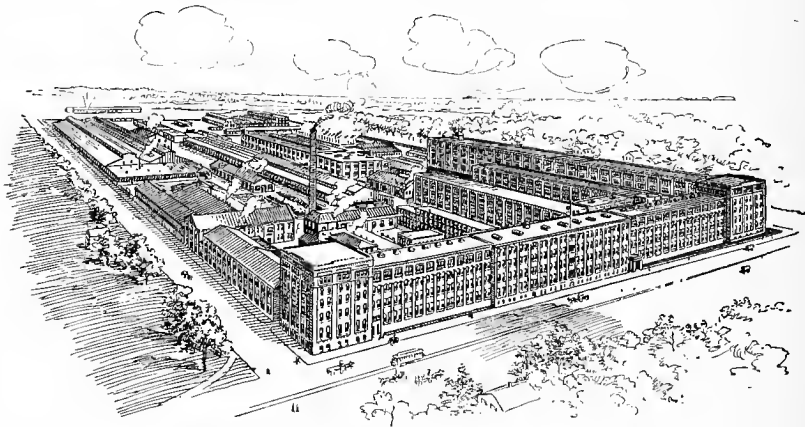


FIG. 26. WORKS OF THE YALE & TOWNE MANUFACTURING COMPANY,  
STAMFORD, CONN.

1914

## LIST OF REGISTRATIONS OF THE TRADE-MARK "YALE"

<i>Country</i>	<i>Number</i>	<i>Country</i>	<i>Number</i>
Argentina.....	18,823	Italy, R. G. Vol. 10.	12,232
Australia.....	13,551	"    R. A. Vol. 114	49
Austria.....	32,654	Japan.....	31,140
"    .....	56,604	Mexico.....	11,466
Belgium.....	15,802	Natal.....	131/1912
Brazil.....	3,020	New Zealand.....	9,786
Bulgaria.....	2,028	Nicaragua.....	169
California.....	3,339	Norway.....	150/1912
Canada.....	69/16,971	Orange Free State..	1,145
Cape Colony.....	4,408	Paraguay.....	1,560
Ceylon.....	1,394	Peru.....	1,417
Chile.....	7,380	Philippine Islands..	1,095
Costa Rica.....	456	Portugal.....	14,687
Cuba.....	23,609	Rhodesia.....	1,346
Denmark.....	319/1912	Russia.....	2,181/12,429
Ecuador.. Liber 69, fols. 285-287		San Salvador.....	118 & 119
Egypt, Cairo.....	198	Santo Domingo....	291
Alexandria..	110	Servia.....	438
Mamsourah	69	Siam.....	No number
Egypt, Cairo.....	199	"    .....	No number
Alexandria..	109	Spain.....	20,821
Mamsourah	70	Sweden.....	16,073
England.....	42,345	Switzerland.....	30,798
Finland.....	2,335	Transvaal.....	4,010
France.....	19,331	Turkey.....	2,202
Germany.....	104,668	"    .....	3,032
Guatemala.....	476	United States.....	63,654
"    .....	477	"    "    .....	74,425
Holland.....	28,175	Uruguay.....	2,353
Hong Kong.....	121/1912	Venezuela.....	764
Hungary.....	24,389	"    .....	1,389
India.....	619/1912		

## ADJUDICATIONS AND SETTLEMENTS

**T**HE word "YALE" is not only duly registered as a trade-mark of the Yale & Towne Manufacturing Company, but in a number of cases decrees enjoining its use by others have been entered by the courts. In numerous other cases infringers, when advised that they were encroaching upon our legal rights, have voluntarily entered into stipulations to desist therefrom in the future. In still other cases infringers against whom suit has been brought have failed to make defence, and have permitted decrees to be entered by default perpetually enjoining them from a continuance of the acts complained of.

A summary of the essential facts relating to the cases in each of these three groups is contained in the following pages. A supplement contains, *in extenso*, for the information of those who are interested, the decisions and decrees of the courts in the adjudicated cases.

## GROUP I

## COURT CASES

*Johnson Foundry & Machine Works, Ltd., Battle Creek, Mich.*

This Company made a variety of metal products, included among which was a line of Coat and Hat Hooks which they marked with the word "Yale," and which they sold under that name. Suit was brought in June, 1905. The U. S. Circuit Court for the Eastern District of Michigan, Southern Division, entered a final decree and injunction against this defendant, enjoining the defendant from infringing our trade-mark "Yale." In 1906 we discovered that this defendant had substituted the word "Hale" in place of the word "Yale" in connection with its Coat and Hat Hooks. Upon remonstrances from us they abandoned this imitation of our trade-mark.

The final decree and injunction of the court in this case enjoined this defendant forever from all use of the name "Yale" "to designate hardware of its manufacture." The decree and injunction will be found in the Supplement.

*Victor M. Grab & Co., Chicago, Ill.*

In the year 1908 this defendant manufactured and sold Coat and Hat Hooks marked as "Yale." Suit was brought against it and was defended. Among other defences set up was the claim that the word "Yale" is so intimately connected with Yale University that no one has a right to appropriate it as a trade-mark. The case was brought before Judge Kohlsaet in the U. S. Circuit Court for the Northern District of Illinois, Eastern Division, and a decision was rendered in our favor sustaining the validity of our trade-mark and enjoining the defendant from infringing it. The decree and injunction will be found in the Supplement.

*Kate Gretzer, New York City*

In 1910 this defendant, who maintained a small retail store in New York City, sold some flat-keyed Locks, not made by us but by another manufacturer, representing them as "Yale" Locks.

Suit was brought in the U. S. Circuit Court for the Southern District of New York. The defendant entered appearance by counsel, but failed to defend the case, and a final decree was granted enjoining the defendant from infringing our trade-mark "Yale." A copy of this decree will be found in the Supplement.

C. Ed. Schulte, Velbert, Germany

This defendant commenced in 1910 to manufacture goods copied from ours, and closely imitating them in many ways, among others by the use of the word "Yale" embodied in the phrase "Yale system," which he used when referring to goods made by him in imitation of ours.

Suit was brought against him in 1912, in Germany, and the case was tried by the Royal Provincial Court of Elberfeld, Fifth Civil Chamber, the case being strongly defended by counsel for Schulte. The result was a decision sustaining the validity of the trade-mark "Yale" as registered in Germany and enjoining the defendant from a further infringement thereof. A copy of the Court's decision in this case will be found in the Supplement which embodies a full statement of the defendant's acts in imitating our goods, and of the reasoning on which the decision rests. The Court reserved decision as to one phase of the case, involving the copy of the sunken panel used by us on the heads of lock cylinders to contain our trade-mark. After a further hearing a decision in our favor was rendered on this issue also as set forth on page 33.

Ernst Boessneck, Chemnitz, Germany

This lock-maker sold locks made by himself to which he affixed the name "Yale" and with which he also associated many of the long-established catalogue numbers used by us in connection with those of our goods which he copied.

Suit was brought against him in the Royal Saxon High Court of Chemnitz, which in 1913 approved and sanctioned an agreement entered into by Boessneck whereby he stipulated that he would thereafter respect the trade-mark "Yale" as belonging to us, and whereby also he recognized and admitted our right to the exclusive use of the catalogue numbers in question and to the distinctive dressing of our goods which he had imitated. A copy of these proceedings, and of the order of the Court thereon, will be found in the Supplement.



Smith-Haines, New York City

This is an Automobile Supply House which purchased from the Lynch Manufacturing Company a lock buckle containing a cylinder or pin-tumbler lock, which the defendant then advertised and sold as a "Yale Lock-Principle Buckle." Suit was brought against this house in 1913 in the U. S. District Court for the Southern District of New York. No defence being made, a final decree was entered enjoining the defendant from infringing our trade-mark "Yale." Copy of the decree and injunction in this case will be found in the Supplement.

General Automobile Supply Co., New York City

This is an automobile supply house which purchased from the Lynch Manufacturing Company a lock buckle containing a cylinder or pin-tumbler lock, which the defendant then advertised and sold as a "Lynch Yale Lock Buckle." Suit was brought against this house in 1913, in the United States District Court for the Southern District of New York. The defendant entered an appearance by counsel, but finally defaulted in pleading, and a final decree was entered enjoining the defendant from infringing our trade-mark "Yale." A copy of the decree and injunction in this case will be found in the Supplement.

Motor Car Supply Co., Chicago, Illinois

This is an automobile supply house which advertised and sold a lock valve made by one E. Hill, Jr., as a "Hill Yale Lock Valve." Suit was brought against this concern in 1913, in the United States District Court for the Northern District of Illinois, Eastern Division. No defence was made, and a final decree was entered enjoining the defendant from infringing the trade-mark "Yale." A copy of the decree and injunction in this case will be found in the Supplement.

A. J. & G. W. Anderson, Galesburg, Illinois

This concern manufactured a small wall safe, and equipped the same with a lock marked with the word "Gale," and called their safe the Gale Wall Safe. Suit was brought against them. They served an answer, and moved to dismiss the complaint. When this motion came on for hearing, however, the defendant appeared in court and consented to the entry of a decree enjoining the defendant from infringing our trade-mark "Yale," and from thereafter using the word "Gale," or any other word so closely resembling the word "Yale" as to be likely to deceive. A copy of the decree and injunction in this case will be found in the Supplement.

## GROUP II

## SETTLEMENTS

IN addition to the infringements of the word "Yale" which have been stopped or discontinued as the result of litigation, the following infringements have been discontinued upon remonstrance from us, without the necessity of resort to legal proceedings:

National Recording Safe Co., Chicago, Ill.

This Company advertised a pocket safe, which it described as being equipped with a "Yale" lock. The lock used was not made by the Yale & Towne Mfg. Co., and, upon this fact being called to the attention of the National Recording Safe Co., the latter at once agreed to discontinue the use of the name "Yale."

Jones Improved Loose Leaf Specialty Co., New York City

This Company advertised a loose-leaf ledger, which it stated was equipped with a "Safety Yale Lock." The lock used was not made by the Yale & Towne Mfg. Co., and, upon this fact being brought to the attention of the Jones Improved Loose Leaf Specialty Co., by our counsel, that Company agreed entirely to discontinue the use of the word "Yale" in connection with products not made by us.

The Tengwall Co., Chicago, Ill.

This Company advertised an automatic round back binder, which was described in its advertisements as equipped with a "Yale-Style Key." Upon remonstrances from our counsel against this use of the word "Yale" in connection with products not made by the Yale & Towne Mfg. Co., the Tengwall Co. promptly agreed to discontinue such use.

Altemus & Co., Philadelphia, Pa.

This Company advertised for sale Altemus Binders equipped with "Yale-Style Key," although the locks and keys furnished with these binders were not made by the Yale & Towne Mfg. Co. Upon remonstrance by our counsel, Altemus & Co. replied that they had purchased the locks in good faith, under the supposition that they were made by us, and agreed at once to discontinue the use of the word "Yale" in connection with these locks.

C. E. Jennings & Co., New York City

This Company advertised a Machinist's Tool Case, which was described as equipped with a "Yale Pattern Lock." Upon remonstrance by our counsel to this use of the word "Yale," in connection with a lock not made by the Yale & Towne Mfg. Co., C. E. Jennings & Co. agreed to discontinue such use.

Lynch Manufacturing Company, Madison, Wis.

This Company manufactured a lock buckle equipped with a cylinder lock, and advertised and sold these lock buckles as "Lynch-Yale Lock Buckles." Upon remonstrance by our counsel against this use of the word "Yale" in connection with locks not made by the Yale & Towne Mfg. Co., the Lynch Manufacturing Co. agreed promptly to abandon the use of the word "Yale" in connection with its products and with products not made by us.

G. Sommers & Co., St. Paul, Minn.

This Company advertised a night latch made by another manufacturer, but described in its advertisements as "Yale Pattern." Upon remonstrance by our counsel against this use of the word "Yale" in connection with articles not made by the Yale & Towne Mfg. Co., G. Sommers & Co. agreed to discontinue all such use.

Collins Hardware Co., Boston, Mass.

This Company advertised for sale night latches made by another manufacturer, as "Yale Pattern Rim Night Latches." Upon remonstrance by us it discontinued the use of the word "Yale" in connection with articles not made by the Yale & Towne Mfg. Co.

Fisher Automobile Co., Indianapolis, Ind.

This Company advertised for sale an electric automobile, and described it as being equipped with a "Yale" lock, whereas in fact the locks used on such automobiles were made by another manufacturer, not by the Yale & Towne Mfg. Co. Upon remonstrance by our counsel against this use of the word "Yale," the Fisher Automobile Co. agreed to discontinue its use except in connection with articles made by us.

E. F. Grell, Hamburg, Germany

This merchant sold locks as "Yale Locks" which were made by other manufacturers. Upon remonstrance by us he agreed to respect the validity of our trade-mark, and not to associate the word "Yale" with goods made by other manufacturers and sold by him.

Stagman Hardware Co. and H. J. Simlick, Norwood, Ohio

H. J. Simlick, a contractor, built some houses for a party in Norwood, Ohio, who desired and specified "Yale Locks" on the front doors. The contractor purchased from the Stagman Hardware Co. locks made by another manufacturer, and applied these locks on the houses. Upon objection by the owner that the locks so applied were not "Yale" locks, both the contractor and the hardware dealer insisted that they were "Yale" locks. Thereupon we instructed our counsel to bring suit against both the contractor and the hardware dealer for the substitution of other locks on orders calling for "Yale" locks, but finally we consented to excuse this offense upon receiving the unqualified agreement, both of the contractor and of the hardware dealer, that hereafter they will respect our trade-mark rights in the word "Yale."

Yale Locksmithing Company, St. Louis, Mo.

This term was adopted as a trade name by one William Dooley, who intended to deal chiefly in our goods. Our counsel advised him that this trade name constituted an invasion upon our legal rights in the word "Yale" which was bound to lead to confusion and damage. He recognized the force of this position, and abandoned the name.

## CASES INVOLVING THE ISSUE OF "UNFAIR COMPETITION"

(DESIGNATED UNDER BRITISH PRACTICE AS "PASSING OFF")

**T**HE common law of England and the United States has always recognized that a manufacturer or merchant is entitled to protection against any acts of another which are designed, or which tend, to encroach on the rights created by the former in the conduct of his business, not only those represented by trade-marks, names, or numbers, but also those embodied in novel or distinctive designs and in the "dressing" of manufactured products.

This branch of the law embodies what is commonly known as the doctrine of "Unfair Competition," or, under British law, as "Passing Off," and is of vital importance to all manufacturers and to their customers, because intended to protect both against substitution and deception.

The following record gives the essential facts concerning cases which involve this issue, some of which have been litigated and others adjusted by consent.

GROUP III  
"UNFAIR COMPETITION" CASES

E. T. Fraim, Lancaster, Pa.

This defendant manufactured and sold a padlock (Fig. 27a) closely imitating in external appearance, or "dressing," but not in its mechanism, the well-known and popular "Yale" padlock (No. 805) shown by the accompanying illustration, Fig. 27.



FIG. 27.  
YALE PADLOCK



FIG. 27a.  
E. T. FRAIM PADLOCK

Mr. Fraim's agent for the sale of these padlocks in New York City, in which district the suit was brought, was Benjamin Alder. Suit was brought against both Mr. Fraim and Mr. Alder, and the United States Circuit Court of Appeals for the Second Circuit, after trial of the case on appeal, sustained the right of the Yale & Towne Mfg. Co. to the exclusive use of the characteristic design and "dressing" of this padlock, and granted a permanent injunction in its favor. The opinion of the Court, and the final decree entered in this case, will be found in the Supplement.

Eagle Lock Co., Terryville, Conn.

In 1902, the Yale & Towne Mfg. Co., as a characteristic method of differentiating its cylinder locks, and especially its cylinder night latches, from those of other manufacturers, adopted the use of a sunken panel on the head of the lock cylinder, in which panel was coined the word "Yale." This constitutes the panel trade-mark shown by Fig. 28; page 33.

In 1906, the Eagle Lock Co. commenced the manufacture of cylinder night latches, and placed a sunken panel containing the word "Eagle" on the face of the cylinder head. In its original form this panel had straight sides, and closely resembled in shape the one adopted and used by us. Upon remonstrances from us, the Eagle Lock Co. modified its practice by changing the shape of the panel, but still continued the use of a sunken panel on the face of the cylinder head in which was coined the word "Eagle." Suit was brought by us in the Supreme Court of the State of New York, and the case was

exhaustively tried before Mr. Justice Gerard, the actual trial consuming almost a month, and a vast amount of evidence being introduced.

The following illustrations show the cylinder head of the Yale & Towne Mfg. Co., with its trade-mark "Yale" in a sunken panel (Fig. 28), and also the two forms of cylinder heads adopted by the Eagle Lock Co. and above referred to (Figs. 29 and 30).



FIG. 28



FIG. 29

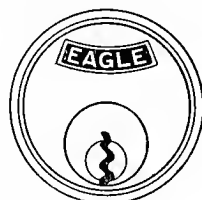


FIG. 30

At the close of the trial the Court held as follows:

"The plaintiff is entitled to an injunction restricting the defendant from manufacturing or selling night latches of the same general style and appearance as the plaintiff's night latches, having cylinder heads thereon marked with the word "EAGLE" contained in a sunken panel having either straight or slightly curved sides as heretofore used by defendant, or in any other sunken panel so similar to plaintiff's as to be likely to mislead purchasers."

The decision of Mr. Justice Gerard, and the injunction and decree granted, will be found in the Supplement.

C. Ed. Schulte, Velbert, Germany

This defendant infringed the word "Yale," and also manufactured locks marked with a sunken panel on the cylinder head.

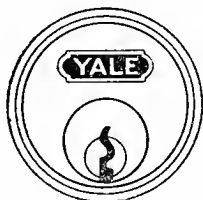


FIG. 31

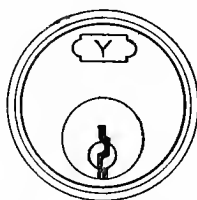


FIG. 32

These illustrations show the cylinder head of the Yale & Towne Mfg. Co. (Fig. 31), and also the cylinder head of the defendant, Schulte (Fig. 32).

The issue pertaining to the right of the Yale & Towne Mfg. Co. to the exclusive use of the sunken panel on the heads of lock cylinders was tried separately by the Court in Germany, which rendered an opinion and decree sustaining the right of the Yale & Towne Mfg. Company to the exclusive control of such methods of marking the heads of lock cylinders.

The opinion and decree of the Court in this case will be found in the Supplement.

In addition to the foregoing cases settled by litigation may be mentioned the following which, upon remonstrance by us, have been settled without litigation by the recognition of our rights.

*Penn Hardware Company, Reading, Pa.*

In 1906, the Penn Hardware Company began to make use, upon the face or head of its lock cylinders, of a sunken panel containing the word "Penn," produced by coining the mark on the metal (Fig. 34). Regarding this as an infringement upon our right to the exclusive use of the sunken panel on the head of a lock cylinder, we instructed our counsel to remonstrate with the Penn Hardware Company, whereupon the latter promptly and honorably agreed at once to discontinue the use of the sunken panels on the heads of its lock cylinders.

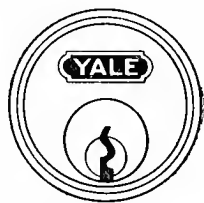


FIG. 33

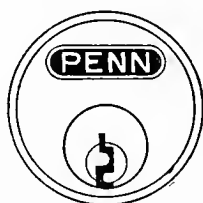


FIG. 34

These illustrations show the cylinder heads of the respective parties.



P. & F. Corbin, New Britain, Conn.

In 1910 this Company adopted a form of sunken panel on the heads of its lock cylinders (Fig. 36), but upon remonstrance from us, and upon our convincing them that the use of such panel was likely to cause confusion between their goods and ours (Fig. 35), to the detriment of both parties, they promptly agreed to abandon its use.

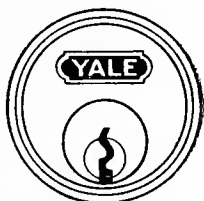


FIG. 35

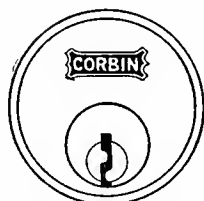


FIG. 36

These illustrations show the heads of the lock cylinders involved in this case.

Safe Lock and Hardware Co., Lancaster, Pa.

This Company manufactured a flat-keyed lock, not a cylinder lock but provided with an escutcheon plate having a sunken panel (Fig. 38). Upon remonstrance from us, and upon our pointing out that such action constituted unfair competition with the characteristic appearance of the head of the cylinder used with our cylinder locks (Fig. 37), agreed to discontinue such use.

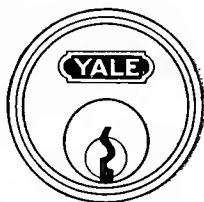


FIG. 37



FIG. 38

These illustrations show the articles which were involved in this case.

S. R. Slaymaker, Lancaster, Pa.

This manufacturer brought out a padlock closely imitating the appearance and "dressing" of our well-known padlock No. 805

(Fig. 39), to which he gave the list number 8805 (Fig. 40). Upon friendly remonstrance from us he agreed to discontinue both the use of the No. 8805 and the close resemblance of his padlock to ours.



FIG. 39



FIG. 40

These illustrations show the padlocks which were involved in this case.

E. T. Fraim, Lancaster, Pa.

This manufacturer put on the market a padlock closely resembling our padlock No. 8454, but upon remonstrance from us agreed to alter the appearance or "dressing" of his padlock, and to abstain from further imitation of our padlock.

Miller Lock Co., Philadelphia, Pa.

This Company manufactured a padlock which was closely patterned in appearance after our popular padlock No. 8454, but upon remonstrance from us promptly agreed to alter the external design and appearance of its padlock.

Belleville Hardware Co., Belleville, Ont.

This Canadian company manufactured and sold a rim night latch in connection with which it used the designating number "42." We represented to it that we had used the number 42, for more than forty years, to designate a certain rim night latch made by us, and that we claimed the exclusive use of that number in this connection, whereupon the Belleville Hardware Co. agreed to discontinue the use of the number 42 for such purpose.

Joh. Wilh. Brunöhler, Velbert, Germany

This manufacturer made a rim night latch closely resembling in external appearance our well-known No. 042, and having on the head of its cylinder a sunken panel containing the word "Sirius." Suit was brought to prevent this encroachment upon our rights, which finally was settled by Mr. Brunöhler's entering into an agreement to pay damages and to abandon the imitation in his own locks of the appearance and "dressing" of our No. 042.

Huber Mfg. Co., Long Island City, N. Y.

This manufacturer made a night latch closely resembling our No. 042, which it marketed under the number 240. Our counsel took the matter up with them and their attorney, and after a thorough investigation of the history of the numbers two and four in connection with our latches, they agreed to abandon their number, which it was recognized was likely to cause their goods to be confused with ours. This concern also used the word "Paracentric" in referring to its latches. On calling to their attention the fact that the word "Paracentric" had been registered as a trade-mark of the Yale & Towne Mfg. Co., they at once abandoned the use of this word.



# SUPPLEMENT

DECISIONS AND DECREES IN  
COURT CASES



DECISIONS AND DECREES  
IN COURT CASES

Johnson Foundry & Machine Works, Limited, Battle Creek, Mich.

At a Session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court Room in the City of Detroit, on Tuesday, the sixth day of June in the year of our Lord one thousand nine hundred and five.

Present: The Honorable Henry H. Swan,

District Judge.

The Yale & Towne Manufacturing Company.  
*Complainant,*  
vs.  
Johnson Foundry & Machine Works, Limited,  
*Defendant.*

In Equity.  
No. 3887.

This suit having been duly commenced by the filing of the bill of complaint herein on the 7th day of April, 1905, and the service of the subpoena upon the defendant the 10th day of April, 1905, and the said defendant having appeared by its solicitor, D. C. Salisbury, and consenting to the entry of this decree, Now, on motion of O. Scott Clark, solicitor and of counsel for the complainant, it is

ADJUDGED AND DECREED that the allegations in the said bill of complaint respecting the ownership and exclusive rights of the complainant in and to the word "Yale" as a trade-mark and trade-name for hardware, are true, and the word "Yale" applied to builders' hardware in the markets of the United States and elsewhere denotes to the public and buyers and users of said hardware the manufacture and product of the complainant, The Yale & Towne Manufacturing Company, and the complainant has a trade-mark and trade-name in the said word as applied to builders' hardware as alleged in the said complaint; and it is further

ADJUDGED AND DECREED, that the defendant, Johnson Foundry & Machine Works, Limited, by manufacturing, selling, advertising, and offering for sale cloak and hat hooks and hall trees under the name "YALE," and with the said name cast, impressed, or marked thereon have infringed upon the exclusive right of the complainant to the use of the said name to designate hardware of its manufacture; and it is further

ORDERED, ADJUDGED AND DECREED that an injunction forthwith issue out of this Court directed to the said defendant, Johnson Foundry & Machine

Works, Limited, perpetually and forever enjoining and restraining said defendant, its members, officers, servants, agents, attorneys, and workmen, and each and every of them, from manufacturing, selling, advertising, or offering for sale, or causing to be manufactured, sold, advertised, or offered for sale cloak and hat hooks or hall trees or builders' hardware of any description under the name "YALE" or with the said name cast, impressed, or marked thereon; or in any manner infringing upon the sole and exclusive right of the complainant to use said word as a trade-mark or trade-name to designate hardware of its manufacture.

Dated, June 6, 1905.

HENRY H. SWAN,  
District Judge.

### INJUNCTION

THE PRESIDENT OF THE UNITED STATES TO JOHNSON FOUNDRY & MACHINE WORKS, LIMITED, ITS MEMBERS, OFFICERS, SERVANTS, AGENTS, ATTORNEYS, AND WORKMEN, GREETING:

WHEREAS, it has been represented to us in our Circuit Court of the United States for the Sixth Circuit, Eastern District of Michigan, Southern Division, that the complainant is the owner and has the exclusive rights in and to the word Yale as a trade-mark and trade-name for hardware, and the word Yale, applied to builders' hardware in the markets of the United States and elsewhere, denotes to the public and buyers and users of said hardware the manufacture and product of the complainant, The Yale & Towne Manufacturing Company, and that you the said defendant by manufacturing, selling, advertising, and offering for sale cloak and hat hooks and hall trees under the name Yale and with the said name cast, impressed, or marked thereon, have infringed upon the said exclusive rights of the complainant to the use of the said name to designate hardware of its manufacture.

NOW, THEREFORE, we do strictly command and enjoin you the said Johnson Foundry & Machine Works, your members, officers, servants, agents, attorneys, and workmen, and each and every of them permanently and forever from manufacturing, selling, advertising, offering for sale, or causing to be manufactured, sold, advertised, or offered for sale, cloak and hat hooks or hall trees or builders' hardware of any description under the name Yale, or with the said name cast, impressed, or marked thereon; or in any way infringing upon the sole and exclusive right of the said complainant, The Yale & Towne Manufacturing Company, to use said word as a trade-mark or trade-name to designate hardware of its manufacture.

Witness, the HON. MELVILLE W. FULLER, Chief Justice of the United States at the City of Detroit, State of Michigan, on the sixth day of June, 1905.

(Copy Seal)

(Sgd.)

WALTER S. HARSHA,

Clerk U. S. Circuit Court, Eastern District of Michigan.

Due service of the above and foregoing Injunction is hereby acknowledged and certified copy also duly served this date.

(Sgd.) JOHNSON FOUNDRY & MACHINE WORKS, LIMITED,

Dated, June 7, 1905.

Defendant.

By EUGENE MILLER, President,  
D. C. SALISBURY,  
Solr. for defendant.



Victor M. Grab & Company, Chicago, Ill.

## DECREE

IN THE CIRCUIT COURT OF THE UNITED STATES,  
NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION.

PRESENT: HONORABLE CHRISTIAN C. KOHLSAAT, CIRCUIT JUDGE.  
FRIDAY, MAY 6, 1910.

The Yale & Towne Manufacturing Co.

vs.

Victor M. Grab

No. 29,337.

This cause coming on to be heard on final hearing, on bill, answer, replication, and proofs, Louis H. Porter and Offield, Towle, Graves & Offield—solicitors for complainant, and Herman Frank, Fred W. Kraft, and Nathan D. Kaplan—solicitors for defendant, and the case being argued by Charles K. Offield in behalf of complainant, and by Herman Frank in behalf of defendant, and thereupon, upon due consideration, and the court being fully advised thereof, it is hereby

## ORDERED, ADJUDGED AND DECREED

1. That the word or name "YALE" is a good and valid trade-mark or name, adopted and originated by the predecessors of said complainant, and in and to which the said complainant has good, valid, and exclusive title, by reason of such adoption and use by complainant and its predecessors in its business.

2. That said complainant is entitled to the exclusive use or application of said word or name "YALE" as a trade-name or mark, in connection with builders' hardware of any kind or description manufactured by said complainant, and in any ramification of said complainant's business.

3. That the said defendant—Victor M. Grab—by reason of the association and use of the said word or name "YALE" upon, and in connection with the manufacture and sale of builders' hardware, such as hall trees, hat trees, coat hooks, hat hooks, etc., and in advertisements, circulars, letters, etc., has violated and infringed the exclusive right of said complainant therein and thereunder, and has unfairly competed with complainant by such unlawful use, exhibition, and appropriation of said complainant's trade-name, or word "YALE."

4. That the said complainant do recover from said defendant—Victor M. Grab—the gains and profits made by him, and the damages sustained by said complainant, by reason of said unlawful use and appropriation of said complainant's

trade-name or mark "YALE," as well as the costs and charges in said suit to be taxed, and that said cause be referred to Hon. James S. Hopkins, as Master, to ascertain the amount of such gains and profits, and the damages sustained by said complainant by reason of such unlawful acts.

5. That a writ of injunction issue according to the prayer of the bill of complaint from and under the seal of this court, restraining and enjoining the said defendant—Victor M. Grab—his agents, servants, employes, attorneys, and workmen, and all others acting by or under his authority, from making, using, or selling builders' hardware of any description, such as coat hooks, hat hooks, hall trees, etc., having associated or allied therewith in any way, said complainant's trade-name or mark, or word "YALE," or any imitation thereof, and from the use or display of said word or name "YALE" in any form of advertisement, circulars, letters, etc., in connection with his said business, and from in any way unfairly competing with said complainant by the use of, or appropriation of said name or word "YALE," or any simulation or imitation thereof.

KOHLSAAT,  
Judge.

IN THE CIRCUIT COURT OF THE UNITED STATES,  
NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION

PRESENT: HONORABLE CHRISTIAN C. KOHLSAAT, CIRCUIT JUDGE.  
SATURDAY, NOVEMBER 19, 1910

The Yale & Towne Manufacturing Co.  
*vs.*  
Victor M. Grab, doing business under the  
firm name and style of Victor M. Grab  
& Co.

No. 29,337.

FINAL DECREE

It appearing to the Court that the parties above litigant have agreed upon a settlement, without further proceedings before the Master, and that the defendant has accounted for, and paid to the complainant, the damages and profits suffered by and accruing to the above-named complainant, and the Court being fully advised thereof, the interlocutory decree heretofore entered on the sixth day of May, 1910, is hereby made final.

KOHLSAAT,  
Judge.

## INJUNCTION

CIRCUIT COURT OF THE UNITED STATES, }  
 NORTHERN DISTRICT OF ILLINOIS, } ss:  
 EASTERN DIVISION, }

## THE UNITED STATES OF AMERICA

To Victor M. Grab, and to your counselors, attorneys, solicitors, trustees, agents, clerks, employes, servants, and workmen, and to each and every of you, GREETING:

WHEREAS, It hath been represented to the Judges of our Circuit Court of the United States for the Eastern Division of the Northern District of Illinois in Chancery sitting, on the part of The Yale & Towne Manufacturing Co., complainant, in its certain bill of complaint, exhibited in our said Circuit Court, on the Chancery side thereof, before the Judges of said Court, against you, the said VICTOR M. GRAB, to be relieved touching the matters complained of. In which said bill it is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience. And it being ordered that a Writ of Perpetual Injunction issue out of said Court, upon said bill, enjoining and restraining you, and each of you, as prayed for in said bill; We, therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you, the said VICTOR M. GRAB, your counselors, attorneys, solicitors, trustees, agents, clerks, employes, servants and workmen, and each and every of you, and all others acting by or under your authority DO ABSOLUTELY DESIST AND REFRAIN from making, using or selling builders' hardware of any description, such as coat hooks, hat hooks, hall trees, etc., having associated or allied therewith in any way, said complainant's trade-name or mark, or word "YALE," or any imitation thereof, and from the use or display of said word or name "YALE" in any form of advertisement, circulars, letters, etc., in connection with your said business and from in any way unfairly competing with said complainant by the use of, or appropriation of said name or word "YALE," or any simulation or imitation thereof; until this Honorable Court, in Chancery sitting, shall make other order to the contrary. Hereof fail not, under the penalty of what the law directs.

To the Marshal of the Northern District of Illinois, to execute, and return in due form of law.

Witness, the HON. MELVILLE W. FULLER, Chief Justice of the United States of America, at Chicago, in said District, this twenty-fifth day of May, in the year of our Lord one thousand nine hundred and ten, and of our Independence the one hundred and thirty-fourth.

JOHN H. R. JAMAR,  
 Clerk.

[Seal]

Kate Gretzer, New York CityCIRCUIT COURT OF THE UNITED STATES, SOUTHERN DISTRICT  
OF NEW YORK

PRESENT: HON. E. HENRY LACOMBE, CIRCUIT JUDGE.

The Yale & Towne Manufacturing Co., <i>Plaintiff,</i> <i>against</i> Kate Gretzer, <i>Defendant.</i>	}	In Equity.
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The bill of complaint, duly verified, having been duly filed in the above entitled case, on the 18th day of May, 1910; and the *subpœna ad respondendum* having been issued, and returned on or about the 19th day of May, 1910; and it appearing therefrom that the said *subpœna* was duly served on Kate Gretzer, the defendant herein, personally, on the said 19th day of May, 1910; and it appearing that the said defendant, Kate Gretzer, duly appeared herein by her solicitor, D. Strassman, Esq., on or about the 1st day of July, 1910; and it further appearing that the defendant, Kate Gretzer, has failed to plead, answer, or demur to the said bill of complaint herein, and is in default therefor; and it further appearing that on the 9th day of August, 1910, the complainant herein duly entered a rule and order that the bill herein be taken *pro confesso* against the defendant, Kate Gretzer, for want of a pleading, and that more than thirty days have elapsed since the entry of the said rule, and that no further proceedings have been had in the case, or taken since the said rule and order was entered; and it further appearing that the complainant has expressly waived an accounting herein;

Now, therefore, upon motion of Louis H. Porter, Esq., solicitor for complainant, it is hereby

ORDERED, ADJUDGED AND DECREED:

*First.* That the complainant is entitled to the exclusive use of the word or name "YALE" as a trade-mark and trade-name, in connection with locks of all kinds.

*Second.* That the said defendant, Kate Gretzer, has violated complainant's exclusive rights in and to the said word "YALE," by selling locks not by the complainant manufactured, but manufactured by other makers, upon the representation that the said locks were "YALE" locks, "YALE" padlocks, and "YALE" night latches.

*Third.* That the complainant have judgment against the defendant for the costs of this action, together with the disbursements to be taxed by the Clerk, and as taxed amounting to thirty-four and 52-100 dollars, and that the complainant have execution therefor.

*Fourth.* That an injunction issue herein perpetually restraining and enjoining the said defendant, Kate Gretzer, her agents, servants, employes, and attorneys, and workmen, and all others acting by or under her authority, from in any form or manner whatsoever making use of the word or name "YALE" in selling or offering for sale any lock not by or for complainant made.

Dated, New York, September 30, 1910.

E. HENRY LACOMBE,  
U. S. C. J.

C. Ed. Schulte, Velbert, Germany

## DECISION

Announced In the King's Name:  
 June 28, In the matter of the firm of The Yale & Towne Manufacturing  
 1912. Company of Stamford, Connecticut, United States of America,  
 plaintiffs,  
 represented, with reference to their legal trade-mark rights, by  
 the merchant Adolf Steinhauer, of Hamburg, Alter Wandrahm 15,  
 authorized representative in the lawsuit; Attorney Dahmen,  
 Counselor of Justice, of Elberfeld, versus the firm of C. Ed. Schulte,  
 of Velbert, defendant,  
 authorized representative in the lawsuit: Attorneys Esch and Dr.  
 Maull, of Elberfeld, on account of plagiarism, trade-mark violation  
 and unfair competition, the Fifth Civil Chamber of the Royal  
 Provincial Court of Elberfeld, in consequence of the verbal hearing  
 of Provincial Court Director Dr. Bellerstein and the Provincial  
 Judge Dr. Cadenbach, has rendered the following verdict:

The defendant is condemned

- I. *aa)* to grant the cancellation of the trade-mark No. 136619 in the Trade Mark Roll of the Imperial Patent Office,  
*a)* to discontinue the use of his trade-mark No. 136619 for designating safety locks and padlocks of all kinds, under a penalty of 1500 marks for each offence.  
*b)* the fact is established that the defendant is obliged to indemnify the plaintiffs for whichever damage has arisen to the same through the use of trade-mark No. 136619 by the defendant,  
*c)* it is decreed that on the defendant's safety locks and padlocks and on his business announcements the trade-mark No. 136619 be removed and that, so far as the removal is not possible, the articles provided with the trade-mark be destroyed.
- II. *a)* The defendant is enjoined, under a penalty of 1500 marks for each offence, from continuing to make and disseminate any further the circulars, instructions for use and "warnings" such as are found in the records, Sheets 24, 25, 26, 31, and 32.  
*b)* the fact is established that the defendant is obliged to indemnify the plaintiffs for the damage caused them by the circulation of the printed matter indicated under *a)*.  
*c)* it is ordered that the printed matter indicated under 3) which is in the defendant's possession and the devices used for producing this printed matter and owned by the defendant be destroyed.
- III. *a)* the defendant is condemned, under penalty of a court fine of 1500 marks for each offence, to stop the use of the Nos. 42, 42L, 42N, 43, 343, 84¼P, and 84¼PN for designating his goods.  
*b)* the fact is established that the defendant is obliged to indemnify the plaintiffs for the damage caused them by the use of the Nos. mentioned under *a)*.  
*c)* the plaintiffs are adjudged the right to make known the following, within one

month after this judgment becomes legally valid, in the *Deutsche Eisenhändler Zeitung*, the *Eberswalder Offertenblatt* and in a paper issued at Velbert at the defendant's expense:

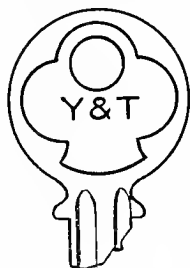
"The defendant has been condemned, under penalty of 1500 marks for each offence, to stop the use of the numbers 42, 42L, 42N, 43, 343, 84¼P, 84¼PN." IV. The defendant is condemned, under a penalty of 1500 marks for each offence, to stop the designation "Yale System" for the locks produced by him. The plaintiffs' more extensive claim is rejected.

The judgment is declared susceptible of temporary execution against a deposit of 5,000 marks.

For the rest, the Court's decision is reserved.

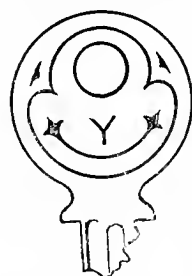
#### STATEMENT OF FACTS

The plaintiffs have deposited in their favor under No. 23502 in the Trade Mark Roll of the Imperial Patent Office on the strength of their application of March 16, 1897, the trade-mark (sheet 23 of the Records) for ironmongery used by builders and plumbers. The same has the shape of a clover leaf in which the letters Y and T are inserted. This trade-mark was renewed on March 14, 1907, i.e., in good season, and is still valid as a trade-mark.



The plaintiffs furthermore have registered under No. 104668 in the Trade Mark Roll of the Imperial Patent Office the trade-mark *Yale* (sheet 83 of the Records) for locks, their parts and keys, on the strength of application filed May 18, 1907.

The defendant has registered in his favor under No. 136619 in the Trade Mark Roll of the Imperial Patent Office on the strength of the application of September 3, 1910, the trade-mark (sheet 81 of the Records covering locks).



The plaintiffs, The Yale & Towne Manufacturing Company, point out that their trade-mark contains the initial letters of their firm name, Y and T, and that these letters were chosen with special reference to that fact.

I. *aa*) and *a, b, c*): The plaintiffs assert:

A comparison of their trade-mark with the defendant's, which is registered for the same class of goods as the plaintiffs' trade-mark No. 23502, shows at once such a concordance of the two trade-marks that a cursory contemplation of the same by the average buyer is very apt to create the danger of confounding the goods provided with either trade-mark with each other. The fact that the defendant uses the letter Y in his trade-mark which has absolutely no bearing on him or his firm name and that the defendant never states his firm name, makes it appear that it is in reality the defendant's precise object to bring about the possibility of his trade-mark being mistaken for the plaintiffs', as the Y in the plaintiffs' trade-mark corresponds with the firm name Yale, and Yale is to-day a generally known designation of safety locks made by the plaintiffs. The small deviations intentionally

chosen by the defendant for his trade-mark are without any importance for the picture as a whole of his trade-mark, i.e. the total impression created, especially with reference to the fact that the trade-mark is not reproduced on the locks in the same size and clear outline as in the illustrations presented herewith. If however, there is danger of confusion resulting (Section 20 of the Trade Mark Law), and, as a matter of fact, such confusion has resulted, as in the case of the firm of Fischer & Soehne, the defendant is obliged to cancel his trade-mark according to Section 9, Figures 1 and 3 of the Trade Mark Law, and the plaintiffs' claim for discontinuance is also well founded, as the request for cancellation implies also the discontinuance of the use of the trade-mark; at any rate, the discontinuance claim must be granted on the strength of Section 1, of the law against unfair competition.

The defendant also uses this trade-mark on his circulars and letters (sheet 24 of the Records), on his Instructions for use and the so-called "Warnings."

The defendant violates the plaintiffs' trade-mark claim knowingly. He is cognizant of it. That is shown by the letter written by him to the firm of Schmidt & Meldau (sheet 36 of the Records); at the very least, the defendant has acted in a grossly negligent manner. The defendant, therefore, must also be liable to the plaintiffs for damages according to Section 14 of the Trade Mark Law, and consequently according to Section 19 of the Trade Mark Law the claim for removal of the trade-mark on the defendant's goods and business announcements is also well founded.

Furthermore the plaintiffs assert: for designating their goods they are using a vignette in such a way that their criterion Yale stands inside of a figure connected at the top and bottom by parallel double strips and at both sides by semicircles. The plaintiffs assert that this vignette is known in interested trade circles as the criterion of the plaintiffs' goods and name witnesses to prove this. The defendant, they say, uses exactly the same vignette with the initial letter of the word Yale, the letter Y, which has absolutely no bearing on his firm name. The defendant, for the purpose to deceive, applies this vignette to goods of the same kind, and at the identical place as the plaintiffs', i.e. on the head and cylinder. The defendant thereby violates Section 15 of the Trade Mark Law. This vignette, too, is used by the defendant in conscious violation of the plaintiffs' make-up. The defendant, therefore, is also obliged to render damages to the plaintiffs on account of the use of this vignette. The discontinuance and the removal claims in this connection are also well founded.

The plaintiffs also point out that they are citizens of the United States of America, that as their domestic representative, as prescribed by Section 23, paragraph 2, of the Trade Mark Law, the merchant Steinhauer, of Hamburg, is registered, and that they are entitled on the strength of the international Union Treaty to which Germany and the United States both belong, according to Article 2 of this Treaty, to claim protection for their trade-mark in Germany.

II. The plaintiffs submit (enclosures F and F1) two of their catalogues and for purposes of comparison with the same (sheets 24 and 25 of the Records), an announcement made by the defendant.

This announcement made by the defendant—so the plaintiffs assert—contains a faithful reproduction of the technical cuts and explanations circulated by the plaintiffs. Pages 3 and 4 of the plaintiffs' catalogue F are faithfully reproduced by the defendant on the inside page of the defendant's announcements (sheets 24 and 25 of the Records). The drawings agree perfectly, so that any difference is not noticeable at all. The plaintiffs state at the top of pages 3 and 4 that the

illustrations are one-half original size, even this statement of the dimensions is given by the defendant in his circular. Likewise the notation "Changes in keys nearly unlimited" printed by the plaintiffs in italics has been used by the defendant, although with the one slight deviation: "The variety in keys is unlimited."

In the catalogue F1 S, 7, etc., the plaintiffs use the phrase "Key changes practically unlimited"; in the English part of his circular, pages 24 and 25, of the Records, the defendant copies this sentence literally.

The drawing on page 4 of the circular (sheet 25 of the Records), exactly agrees with the drawing on pages 68 and 69 in the plaintiffs' catalogue F.).

An additional concordance consists of the additional technical drawings and numerical designations, sheets 24v, 25 and 25v, of the defendant's circular and those on pages 3, 4, and 69 of the plaintiffs' catalogue F.

The plaintiffs send out instructions for use with all their safety locks (sheet 28 of the Records), headed "Warning." This warning, too, has been faithfully reproduced by the defendant (sheet 26 of the Records) both pictorially and as to the text. On one side, the defendant, in this connection, shows the cross section of a closing cylinder belonging to a mortise-lock, and this cross section corresponds or conforms exactly to that of the plaintiffs'. On the other side, the defendant, in exact concordance with the plaintiffs' drawings, reproduces the back view of the screwing method, one of which is intended for the closing cylinder of a box lock and the other one for a mortise-lock. This, too, is taken from the plaintiffs' "Warning."

The plaintiffs also made up a set of instructions (sheet 29 of the Records). This, too, has been imitated by the defendant (sheets 31 and 32 of the Records).

On page 2 of the two instructions for use a technical description of the attachment of the safety lock to the door is reproduced which exactly corresponds with the plaintiffs' down to the arrows and letters. Even the text of the instructions of the defendant is drawn up in imitation of the plaintiffs' in all essential parts. Likewise the picture showing the connecting rod *c*), and the connecting rod *d*) in the defendant's instructions, as well as the text in the instructions referring to this picture in Nos. 2 and 6, have been made in faithful imitation of the plaintiffs' instructions both as to the picture and the wording.

Finally, the defendant has also imitated in all detail parts in the picture on the front page of their calendar (sheet 24 of the Records) showing the attachment of the lock to the door, the plaintiffs' picture (sheet 33 of the Records), which the plaintiffs had published. The defendant then carried the imitation so far as to arrange on his picture 5 sets of tumblers while, as a matter of fact, he has only 4 sets on the market, all told.

Aside from the fact that the defendant, by this conduct, has violated section 1 of the law against unfair competition to the plaintiffs' detriment, he has also violated Section 1, Figure 3, Section 3, Section 11, Paragraph 1, of the law concerning the author's rights to works of literature and compositions, dated July 19, 1911. This involves technical illustrations of an instructive tenor, i.e. printed matter belonging to the plaintiffs which is protected by the law of July 19, 1911.

The plaintiffs, therefore, make this motion according to Sections 36 and 42, of this law and point out that as citizens of the United States of America they are entitled on the strength of the state treaty of January 15, 1892, to assert protective claims on account of violation of copyright privileges in Germany.

III. The defendant, furthermore, has appropriated the numerical designations peculiar to the plaintiffs under which they sell their goods—the plaintiffs



are in the habit in their business to designate the locks by numbers to facilitate and expedite the ordering of their locks—for the purpose of creating, among the buyers, to whom the defendant is offering his goods, the erroneous impression that the goods offered emanate from the plaintiffs' business. Neither on the labels or on the goods themselves or on the packings used by the defendant, on his instruction sheets or on his warning card is the origin of the goods as being the defendant's business or any reference to the defendant's firm contained. The defendant evidently intentionally withholds his name so as to more successfully cover up the deception practised by him by making the public believe that the goods emanate from the plaintiffs' factory. Withal, the defendant sells about 20 per cent. cheaper than the plaintiffs and quotes accordingly, thus creating by his quotations the appearance of a particularly advantageous offer. In particular does the defendant use one of the plaintiffs' principal numbers, i.e. No. 42. In the plaintiffs' catalogue No. FS 3, the numbers 42 and 343 are indicated. The same numbers are given by the defendant on page 2 of his circular (sheet 24 of the Records), in the illustration there reprinted. On pages 4 and 5 of their catalogue the plaintiffs mention No. 43; the defendant uses the same number to indicate the imitation of the plaintiffs on page 3 of the circular, (sheet 25 of the Records). On page 69 of their catalogue the plaintiffs mention the Nos. 84 $\frac{1}{4}$  P and 84 $\frac{1}{4}$  PN. These numerical designations solely connected with the plaintiffs' business are added by the defendant to the imitation page 4 of his circular (sheet 25 of the Records).

The plaintiffs particularly point out that the defendant is not content to use the plaintiffs' numbers, but that he has even added to the numbers the same letters L, N, P, and PN, which are peculiar to the plaintiffs.

The defendant uses these numbers of the plaintiffs with dishonest intentions; that is shown also by the defendant's letter of August 29, 1911, to the firm of Schmidt & Meldau, in which he endeavors to induce this firm to proceed with him against the American competition which refers exclusively to the plaintiffs.

The merchant Landmann, of Bochum, and the traveler Otto Simon, of Hamburg, were also told by the defendant's traveler that the defendant was copying the plaintiffs' goods faithfully, on which account he was using the letter Y. The exactitude with which the defendant imitates is also shown by a comparison of the locks 42 of the plaintiffs with the imitation on page 2 of the circular of the defendant (sheet 24 of the Records). The defendant thereby again violates the law against unfair competition.

According to Article 10b of the Union Treaty the plaintiffs are also entitled to the protective claim on the strength of the law against unfair competition.

IV. On his letter-heads the defendant uses for his locks the designation "according to the American Yale system." The defendant even goes so far as to designate his locks as Yale locks. The defendant thus usurps the plaintiffs' trade-mark No. 104668. At any rate the defendant thereby violates this trade-mark of the plaintiffs. The plaintiffs, therefore, move: I. *aa*) that the defendant be condemned to agree to the cancellation of the trade-mark No. 136619 in the Trade Mark Roll of the Imperial Patent Office.

*a*) that the defendant be condemned to stop, under a court penalty of 1500 Marks for each offense, the use of the clover leaf picture employed by him with the letter Y, and the vignette used by him, parallel at the top and bottom and semi-circular at both sides with the letter Y, for designating safety locks and padlocks of all kinds; *b*) that the defendant be condemned to indemnify the plaintiffs for the damage caused them by the use mentioned under *a*;

- c) that the court decree that on the defendant's goods and on his business announcements the picture of the clover leaf with the letter Y and the vignette mentioned under *a* be removed by an official of the court and that, so far as this is not possible, the articles provided with the picture or with the vignette be destroyed;
- II. a) that the defendant be enjoined, under penalty of 1500 Marks for each offence, from again making or disseminating the circulars, instructions for use or "warning" filed with the Clerk of the Court,
- b) that the defendant be condemned to indemnify the plaintiffs for the damage caused by the dissemination of this printed matter;
- c) that the court decree that the printed matter in the defendant's possession, mentioned under *a*), and the devices used for producing this printed matter and owned by the defendant, be destroyed by an official of the Court;
- III. a) that the defendant be condemned, under penalty of 1500 Marks for each offence, to discontinue the use of the Nos. 42, 42L, 42N, 43, 343, 84¼ P and 84¼ PN, for designating his goods;
- b) that the defendant be condemned to indemnify the plaintiffs for the damage caused them by the designations mentioned under III, *a*;
- c) that the court decree that the decreeing part of the judgment under III be made known, at the defendant's expense, within a period to be determined by the court, in the *Deutsche Eisenhändlerzeitung*, in the *Eberswalder Offertenblatt*, and in a paper published in Velbert;
- IV. That the defendant be condemned, under penalty of 1500 Marks for each offence, not to use the designations "Yale" and "Yale System" for the locks produced by him.

That the defendant be imposed the costs of the lawsuit and that the judgment be declared susceptible of temporary execution against a deposit.

The defendant moves:

That the suit instituted be dismissed with costs, that, in the event of the defendant being found guilty, a stay of execution be granted against a deposit.

He disputes the plaintiffs' assertions, in particular the one that the plaintiffs' locks are generally known in interested trade circles as Yale locks. He points out that the plaintiffs' locks are protected neither by a patent or by a utility pattern. The defendant, therefore, claims to have a right to copy them.

As against the various motions made by the plaintiffs the defendant asserts:

With reference to I: that he is the registered owner of the trade-mark No. 136619, whose cancellation and the discontinuance of whose use are asked by the plaintiffs on account of the alleged danger of confusion in connection with the trade-mark No. 23502. Such danger of confusion, however, he states, does not exist any more than a violation of the law against unfair competition. The form chosen by the defendant had suggested itself from the very first, because the defendant had intended to arrange his trade-mark on the ring of the key and in the outer round surface of the head and the cylinder. The outward form of the two trade-marks in itself shows fundamental differences according to the defendant. Furthermore, a special deviation exists in that in the defendant's trade-mark "& T" is lacking and that the defendant's trade-mark shows under the letter Y a parallel line to the outer enclosure with a trident at each of its ends. There is, therefore, according to the defendant, no danger of confusion in the sense of the trade-mark law. Likewise all intention to deceive is lacking on the defendant's part. In particular should such intention not be deduced from the defendant's failure to indicate his firm, since he had to omit this at the express request of his exporters.

Since, according to Figure 1 of Section 4 of the trade-mark law, one letter is not susceptible of protection as a designation of goods, the plaintiffs cannot assert that in the defendant's trade-mark the letter Y constitutes its characteristic and essential part. At any rate any clue or basis is lacking for the assumption that the defendant, even if a trade-mark violation should be assumed, has acted knowingly or even in a grossly negligent manner.

The defendant disputes that the vignette used by the plaintiffs with the word Yale is a make-up of their goods in the sense of Section 15 of the trade-mark law. Furthermore, the vignette used by the defendant would not violate the plaintiffs' alleged make-up anyway. The outer border is not an extraordinary one, but is being used every day. The word Yale does not agree with the letter Y either and cannot be confounded with it. The fact that the letter Y does not occur in the firm or in the defendant's name, is without any consequence. Neither does the fact that the defendant arranges his vignette in the same place as the plaintiffs prove anything, since as a matter of course only such places of the goods are suitable for that purpose as project prominently. The defendant also disputes that he is using his vignettes for the purpose of deceiving the public, particularly for bringing about confusion in connection with the plaintiffs' manufactures.

With reference to II: Neither the illustrations nor the texts of the defendant's printed matter agree with the corresponding parts of the plaintiffs' printed matter; the lock boxes are different, consequently also the press buttons. Aside from this, the defendant cannot be restrained from advertising his locks, by the manufacture of which he does not violate any protective rights of the plaintiff, by means of printed matter and from publishing illustrations of the locks. That is all the defendant has done. He also has a right to publish instructions along with the rest. The defendant has not taken over anything literally from the plaintiffs' text. The defendant makes locks with 3 to 6 sets of tumblers and not only with 4 sets.

Furthermore, the catalogues as published by the plaintiffs do not come under the provisions of the law concerning copyright of works of literature and musical compositions, as such catalogues are not the product of individual intellectual work and do not possess an instructive character. If necessary, the defendant wishes to lay claim to the protection of Section 19, paragraphs 11. c., as this involves independent work performed by the defendant.

With reference to III: The use of some numbers of the plaintiffs does not run counter to the general views held in business intercourse, but corresponds with what is frequently practised. It is customary in the lock line that for reasons of practical convenience numbers become established for generally distinguishing and designating certain classes of goods which possibly were originally taken from some one concern's catalogue (Proof: Opinion Sheets 49 and 50 of the Records). Furthermore, the numbers mentioned by the defendant are generally known and the fact is precluded that confusion might be caused by the numbers. The defendant also submits a number of catalogues of different firms which are to show the correctness of his statements concerning the numbers. The defendant's letters to the firm of Schmidt & Meldau does not prove any dishonest intention on the defendant's part, as the defendant has the right to compete with the plaintiffs.

With reference to IV: The defendant has a right to speak on his letter-heads of locks "according to the American Yale system." It is just the addition "System" that makes it clear that it was the defendant's intention to preclude the possibility of confusion with the *original* make. The defendant does not use the word Yale and never did use it, and if he states that he makes locks according to

the Yale system, this does not constitute a usurpation of the Yale trade-mark, but only a statement of the fact that he makes locks similar to those made by the plaintiffs in America. This the defendant has a right to do.

For the rest, the contents of the briefs and all of the documents and written matter submitted are made reference to.

#### REASONS FOR THE DECISION

The plaintiffs are an American firm and properly represented according to Section 23, paragraph 2, of the trade-mark law. Likewise do the plaintiffs as Americans enjoy the protective rights asked by them in Germany on the strength of the treaties mentioned by them.

With reference to I:

Indisputably the plaintiffs' trade-mark No. 23502 is older than that of the defendant, No. 136619.

Indisputably both trade-marks are used for goods of the same kind.

Indisputably does the defendant's trade-mark deviate in certain respects from the plaintiffs'.

The question is whether, in spite of these deviations, the danger of these two trade-marks being confounded with each other exists.

In judging this question, the two trade-marks must be considered as they appear in their application to the goods provided with them where the deviations naturally do not appear as prominently or as strikingly as they do on the reproduction presented in sheets 23 and 81 of the Records.

In judging the danger of confusion, all that is conclusive or decisive is the total impression made on the casual observer by the trade-mark. From this point of view, it is found that in the first place the same pictorial impression exists in the two trade-marks. In both a composition of a picture (clover leaf) and letters is found. In both the letter Y is used, probably the one letter in the entire alphabet which occurs the least frequently. It is exactly the use of this letter that essentially determines the total impression of the trade-mark. Even if a letter in itself is not susceptible of protection, the composition chosen of a picture with a letter is so susceptible, and here it is particularly the picture chosen with the rare letter Y which unquestionably involves danger of confusion for the buyer's eye in its effect and in its total impression. Even if the defendant has omitted the "& T" of the plaintiffs' trade-mark, and even if the defendant has added the line with the two so-called tridents.

It is just because of the use of the letter Y by the defendant that there is no doubt left in the Court's mind as to this letter having been purposely chosen by the defendant who knew the plaintiffs' trade-mark without a doubt, for the purpose of bringing about confusion and even increasing it. As justly stated by the plaintiffs, the letter Y points to the Yale firm, and this connection has brought the court to the conviction that the defendant has purposely arranged his trade-mark in such a way as to cause confusion. This, however, constitutes a conscious violation of the plaintiffs' trade-mark by the defendant.

Such being the case, however, the plaintiffs' cancellation claim is well founded according to the trade-mark law. Furthermore, since conscious violation exists, the plaintiffs' claim for damages is also justified according to Section 14 of the trade-mark law. The plaintiffs have not yet said anything as to the extent of the damage,

so that their claim in this connection can only be conceived and judged in the sense of a motion to establish the fact that the defendant is liable for damages at all. The legal requirements existing therefore, judgment had to be rendered accordingly. Finally, according to Section 19 of the trade-mark law the plaintiffs' further claim covering the removal or destruction of the trade-mark in accordance with their motion is also well founded.

As regards the discontinuance claim, this finds no support in the trade-mark law, which only recognizes cancellation; nevertheless, this claim is well founded according to Section 1 of the law against unfair competition, which is also applicable against a registered trade-mark. Undoubtedly the use of the defendant's trade-mark on locks, i.e. on goods similar to the plaintiffs', is apt to create the erroneous impression on the part of the buying public that the goods provided with the trade-mark emanate from the plaintiffs' factory. This constitutes a usurpation of the plaintiffs' industrial activity by misleading the trade, which unfairly promotes the defendant's competition, and at the same time unfairly jeopardizes that of the plaintiffs, thus being a violation of good morals in the sense of Section 1 of the law against unfair competition. The fact that through the registration of his trade-mark the defendant enjoys the formal rights bestowed by Section 12 of the trade-mark law does not affect the applicability of Section 1 of the law against unfair competition. (Cf. *Juridical Weekly*, 1912, page 309.) From these points of view, the plaintiffs' discontinuance claim is also well founded.

As regards the vignette, the plaintiffs only claim in connection therewith the make-up in the sense of Section 15 of the trade-mark law. Even now the fact can be established that the defendant's vignette in its form with the letter Y is susceptible of being confounded with the plaintiffs'. In this connection the same arguments apply which were set forth above in regard to the use of the letter Y. The only question is whether the plaintiffs' vignette constitutes a make-up in the sense of Section 15 of the trade-mark law. The defendant has disputed this and in this respect, therefore, it will depend on the plaintiffs' offered proofs as to whether their vignette is considered as a criterion of their goods by the trade circles interested.

With reference to II.

It is true the plaintiffs goods are protected neither by a patent or by a utility pattern so that the defendant has the right to copy the locks themselves. Neither can the defendant's right be contended to advertise his manufactures. If that is all the defendant has done, the plaintiffs' corresponding claims would be without foundation.

Now, the plaintiffs have gotten up a catalogue with illustrations of their locks and keys. The locks and keys are shown in such a way that they make it clear to a mere layman, but certainly to an experienced buyer, just how the locks are made in detail, how they operate with the use of the respective keys. This, however, makes the plaintiffs the author of illustrations of a technical nature in the sense of Section 1, No. 3, of the law concerning authorship rights to works of literature or musical compositions, and they are protected under the provisions of this law.

If with this the circular of the defendant (sheets 24 and 25 of the Records) is compared, a complete concordance or agreement with the plaintiffs' illustrations becomes apparent at first glance. On the first page there is the plaintiffs' display-picture, sheet 33, on pages 2, 3, and 4 of the circular, exact illustrations of locks such as the plaintiffs show them in their catalogue, pages 3, 4, 68, and 69, are found. That the defendant's object was an imitation is also evident from the fact that the defendant makes his illustrations exactly like the plaintiffs', one-half the original

size, which the defendant expresses in the same manner as the plaintiffs, also from the sentence taken over from the plaintiffs' printed matter, "Key changes practically unlimited." The exact reproduction of the plaintiffs' illustrations in the defendant's circular can only be explained by assuming that the defendant used the plaintiffs' catalogue as a model to copy from when making them; otherwise so slavish an adherence would not be possible at all.

Even if it was not intended to impute to the plaintiffs' catalogue or the illustrations found therein the character of the prints referred to in Section I, Figure 31. c., the defendant by the exact imitation as described would have violated Section I of the law against unfair competition. There is no doubt that the defendant has acted for purposes of competition and that he has also acted for the purpose of unfair competition is shown by the fact that in his illustrations, as mentioned above, he used trade-marks that might lead to confusion, i.e. knowing full well that there is the danger of his trade-mark being mistaken for the plaintiffs'. This implies a violation of good morals on the defendant's part in the sense of Section I of the law against unfair competition, and this also furnished all of the plaintiffs' claims concerning the circular an undeniable foundation.

This also applies to the instructions for use. These also agree in all essential parts with the plaintiffs' instructions. Here, too, the defendant has used the same display picture shown in the plaintiffs' instructions for use. Furthermore, the defendant has faithfully reproduced several sentences from the plaintiffs' instructions. Finally, the defendant has added to the instructions the same technical description covering the attachment of the safety lock to a door as arranged by the plaintiffs themselves on their instructions. This pictorial representation again shows the defendant's trade-mark which is apt to mislead.

Instructions of this kind are no doubt of an educational nature, and therefore afford the author the protection of the copyright law for works of literature and musical compositions, and furthermore all that has been said concerning the catalogue, i.e. that the defendant at all events by the slavish imitation of the plaintiffs' instructions violated Section I of the law against unfair competition, also applies here. Therefore, the plaintiffs' claim in this direction is also well founded.

Finally, the same points of view as to the law and as to facts enter into consideration with regard to the "Warning." The two copies submitted show an exact agreement. The defendant has faithfully imitated as to the text and the pictures the warning added by the plaintiffs as to their safety locks; here, too, he has again used the trade-mark violating the plaintiffs'. This shows that the plaintiffs' claim in this respect is also well founded.

With regard to the claim for damages, the same applies as under I. The damage claim made in this connection is also to be conceived as a motion to establish the facts and must be so judged.

The removal and destruction claim finds its support in Section 14 of the law concerning the copyright for works of literature and musical compositions.

With reference to III.

The plaintiffs base this claim solely on Section I of the law against unfair competition in connection with Section 826 of the Civil Code.

The fact that the defendant in his circular has added to the illustrations borrowed and copied from the plaintiffs the same numbers as have been given to their locks by the plaintiffs is not disputed. It may be conceded to the defendant that the use of the factory numbers of another firm is customary in his line of business, so that the opinion offered by the defendant in this respect is not necessary.

It is decisive here, however, that the defendant has added exactly these numbers to the illustrations taken from the plaintiffs' printed matter which are provided with the defendant's trade-mark violating the plaintiffs' trade-mark. These facts must be considered jointly and must lead to the conviction that the defendant chose the plaintiffs' numbers in this connection in order to create the deception mentioned and to bring about the danger of confusion referred to, and thus to jeopardize the plaintiffs by unfair competition in a manner violating good morals. That this was the defendant's intention and that his whole tendency was to compete unfairly with the plaintiffs is shown by the letter sent by the defendant to the firm of Schmidt & Meldau. If the defendant had done nothing else than used the plaintiffs' factory numbers, there might still be doubts as to the intended unfair competition, but the fact that the defendant picked out the plaintiffs' numbers even with their additions N, L, P, and PN—so far as N, L is concerned, the defendant feels able to explain that the letters stand for nickle or lacquer (varnish), while for P and PN he has no explanation—admit of no doubt that the defendant has acted for the purpose of misleading the consumers and thus violated the Section I of the law against unfair competition to the plaintiffs' detriment. This also establishes the plaintiffs' discontinuance and damage liability claim in this direction.

With reference to the damage claim the same remarks apply as for the plaintiffs' request for damages judged under I and II.

The claim for publication finds its support in Section 23, paragraphs 4 and 5, of the law against unfair competition. With reference to the defendant's entire attitude it seemed proper also to concede this claim of the plaintiffs. The nature of the publicity is shown by the tenor of the judgment.

IV. This claim is based on the plaintiffs' trade-mark Yale. The defendant uses on his letter-heads the inscription "Padlocks, Furniture Locks and Corridor Locks after the American Yale System." In this the plaintiffs see a violation of the trade-mark registered for them, Yale, while the defendant points out that exactly by the addition "System" he calls attention to the difference between his locks and those of the Yale Company, thus precluding the possibility of confusion.

It must be conceded in the defendant's favor that if Yale were a generic term, a generally known mark for locks in general, the designation of his locks as made after the American Yale System would not constitute a violation of the plaintiffs' Yale trade-mark. Yale, however, is not a generic term. Rather is Yale a mark or trade-mark whose protection only dates from May, 1907, so that it would be quite impossible for it to have come into general use. Furthermore, the letter written by the defendant on August 29, 1911, to the firm of Schmidt & Meldau clearly shows that it was only at that time that the defendant wanted to start competing with the plaintiffs by means of his locks made after the Yale system. That is expressed in so many words by the defendant in his letter. The defendant, therefore, up to that time did not himself believe that Yale was a generic term. The defendant's letter further shows that he had the intention to deceive the buying public by the designation "after the *American Yale system*." The defendant actually, as the court is convinced, had the intention to imitate, therefore himself considered the means chosen by him as suitable for imitation. Even if this is not decisive with reference to the establishment of the danger of confusion, this circumstance yet forms an essential clue for its actual existence. The plaintiffs are an *American* firm. They have had the trade-mark Yale registered for these locks. If the defendant announces that he is putting locks made after the American Yale system on the market, this constitutes for the still recent trade-mark protection of

the plaintiffs a danger of confusion. At any rate, in ordinary business transactions which frequently take place quickly and hastily, there is a strong possibility of the goods of the one concern being confounded with those of the other by the designation "after the American Yale system," and the plaintiffs, therefore, have the right on the strength of Section 12 of the trade-mark law to enjoin the defendant from using this designation for his locks.

That the defendant also used the direct designation Yale locks for his locks is something for which the plaintiffs have offered no proofs. Neither is there any evidence to show this. The plaintiffs' claim to that extent therefore had to be rejected.

In so far as the statements made allowed of a mature decision, partial judgment had to be rendered as mentioned, for the rest decision had to be reserved.

(Signed)

KILTZ,  
BELLERSTEIN,  
DR. CADENBACH.

This defendant, in addition to infringing the word "Yale" and other trade-marks of the Company, also copied the marking of the sunken panel on the cylinder head of cylinder locks made by us. This phase of the case was reserved for a further hearing, and the decision of the court on the cylinder head portion of the case follows:

#### OPINION

Announced on April 18, 1913.	In the King's Name: In the matter of the firm of the Yale & Towne Manufacturing Company of Stamford, Connecticut, United States of America, represented, with reference to its legal trade-mark rights, by Adolf Steinhauer, a merchant of Hamburg,
	Plaintiff, authorized attorney: Counsellor of Justice Dahman, of Elberfeld, versus the firm of C. Ed. Schulte, of Velbert, Defendant. authorized attorneys: Attorneys Esch and Dr. Maull, of Elberfeld,
	on account of trade-mark violation, the fifth civil chamber of the Royal Provincial Court of Elberfeld, in consequence of the hearing of April 4, 1913, and with the co-operation of Provincial Court Director Kiltz, Provincial Judge Dr. Bellerstein and Court Assessor Dr. Preyer, has rendered the following verdict:

The defendant is condemned:

- 1) to discontinue the use of the vignette employed by him, parallel at the top and at the bottom and semicircular at both sides, provided with the letter Y, for the purpose of designating safety locks and padlocks of all kinds, under a penalty of up to 1500 marks for each offence,



2) the fact is established that the defendant is obliged to indemnify the plaintiff for the damage which the same has suffered through the use of the vignette designated under No. 1.

3) It is decreed that on safety locks and padlocks of all kinds made by the defendant as well as on business announcements made by him the vignette mentioned under 1 be removed by an official of the court and that, so far as such removal is not feasible, the articles bearing this vignette be destroyed.

The defendant is condemned to bear the expense of the lawsuit.

This judgment is declared susceptible of temporary execution against a deposit of 1000 marks.

### STATEMENT OF FACTS

In the partial judgment of this court dated June 28, 1912, to which reference is hereby made, the entire condition of affairs and the litigants' relationship are laid bare, particularly also so far as the still unfinished part of the plaintiffs' claim concerning the vignette is involved.

The parties to the suit have in so far repeated their previous statements and explanations as well as their motions and made the result of the proofs rendered which, according to the decision as to proofs simultaneously announced with the partial judgment, had reference to the question of make-up, the object of the proceedings.

In accordance with their documents of January 27 and March 26, 1913, the plaintiffs have offered any additional proofs necessary for the question of make-up. The defendant submitted the contents of his document of February 19, 1913, to which reference is hereby made, and presented a cardboard box with a vignette containing the letters H. & T. V.

### REASONS FOR THE DECISION

In the partial judgment announced on June 28, 1912, the fact was already established in the reasons concerning the vignette in question that the defendant's vignette with the letter Y is susceptible of being confounded owing to its form with that of the plaintiffs', and that exactly the same thing applies here which is set forth in the balance of the reasons for the decision concerning the use of the letter Y. Since the court hereby expressly maintains this previous standpoint, the reasons for the decision in the previous partial judgment are made reference to so far as necessary.

According to the result of the proofs taken, the court has reached the conviction that the vignette used by the plaintiffs with the inscription is indeed considered as a criterion of the plaintiffs' safety locks and padlocks in interested trade circles. "Interested trade circles" know at once when they sell locks with the vignette in question that they are made by the plaintiffs. This has been shown by the proofs rendered, and this, therefore, constitutes the characteristic features of the make-up in the sense of Section 15 of the trade-mark law. It is no longer necessary to take further proofs in this direction; all that is involved—as shown by the plaintiffs' motion—is its vignette with the inscription Yale, and the defendant's vignette

with the letter Y is susceptible of being confounded with it. It is only this vignette with the letter Y that the plaintiffs' motion is directed against; the further proofs offered by the defendant therefore are of no consequence.

The defendant's objection that the United States know of no protection of make-up corresponding with Section 15, or that the plaintiffs have no make-up protection in the United States concerning the vignette is irrelevant; on the strength of the international Union Treaty, to which Germany and the United States belong, the plaintiffs are entitled to claim protection for the trade-marks in Germany (Imperial Law Paper, 1903, page 167, article 2), i.e. protection on the basis of the *German* trade-mark law (Section 23, where it says "*this*" law). It is, therefore, a matter of indifference whether the United States know the make-up at all or whether the plaintiffs enjoy make-up protection in the United States with reference to the vignette; for it is not the protection granted by the United States, but that allowed by Germany which is decisive, since—and that is the only point at issue—German trade-marks get the same protection in the United States as American trade-marks.

That the defendant used the vignette with the letter Y for the purpose of practising deception in commerce and trade is shown by the previous judgment, reference to which has already been made.

Since Section 19 of the trade-mark law also has reference to Section 15 of the law, the principal motion made in this connection and the incidental motions are well founded.

Costs according to Section 91, Civil Code Regulations. Through the plaintiffs' claim which was rejected (IV of the partial judgment) special costs have not been entailed.

Susceptible of temporary execution, according to Section 710 of the Civil Code Regulations.

(Signed)

KILTZ,  
BELLERSTEIN,  
PREYER.

Ernst Boessneck, Chemnitz, Germany

This is to certify that the foregoing document, dated March 6, 1913, with the certified copy belonging thereto has been executed on page 2 and 4b in accordance with the laws of this country at the Royal Saxon High Court of Chemnitz by the Secretary Lehmann authorized thereto.

Chemnitz, this 29th day of April, 1913.

The President of the Royal High Court.

[L. S.]

(Signed)

GÖLITZ.

Official Copy.

Public session of the first Chamber for commercial matters of the Royal High Court.

In the presence of

1. Dr. Nestler, Counsellor of the Court, as president.
2. Baldauf, Commercial Judge.
3. Tetzner, Commercial Judge, as assistant Judges.  
Referendary Schultz, as Clerk of the court.

Chemnitz, March 6, 1913.

In the Civil Proceedings of

The Yale & Towne Manufacturing Company, New York,

Plaintiffs

represented in the proceedings by Counsellor of Justice Beutler, Dr. Funke and Dr. Hübner, of Chemnitz, attorneys at law,

vs.

Ernst Boessneck, of Chemnitz, Manufacturer,

Defendant,

represented in the proceedings by Counsellor of Justice Dr. Gühne and Dr. Hentschel, of Chemnitz, attorneys at law, for unfair competition, there appeared at the call of the matter at the hearing appointed for the publication of a decision

1. for the plaintiffs Dr. Funke, attorney at law,
2. for the defendant Dr. Hentschel, attorney at law.

The parties request that the proceedings be taken up for the purpose of entering into a compromise.

The parties then hand to the court a written compromise, which was read and approved.

Read,

Dr. NESTLER.

Approved

SCHULTZ.

COMPROMISE

The defendant undertakes to remove from his catalogues the numbers mentioned in the pleadings of November 29, 1912, claim 2)—pages 65-67 of the court files and not to offer for sale and sell his products under these numbers. He also undertakes not to use the word "Yale" in his catalogues and other advertisements and at the offering for sale and selling of his products.

The plaintiff waives all further claims brought forward against the defendant, and more particularly all claims for damages.

The judicial costs are borne by the plaintiff. The extra judicial costs are borne by each party.

The plaintiffs reserve to themselves the right to revoke this compromise until the 16th inst by special pleadings.

Issued as office copy,

Chemnitz, April 2, 1913.

The Clerk of the Royal High Court.

[L. S.]

(Signed)

LEHMANN, Secretary.

Certified copy

of the claim 2 of the pleading of November 29, 1912, referred to at the head of the compromise.

2) To forbid the defendant under a penalty of 1500 marks for each case of contravention, payable to the court, to offer for sale and sell the locks and keys sold by him, namely:

open rim locks under the numbers 2, 4, 10, 12,  
 rim locks with bolts with open locks and box staple with the Nos. 701, 702, 711, 712,  
 oblong rim locks with a falling latch with the Nos. 441, 442, 741, 742,  
 rim locks with trap and bolt with the Nos. 750, 762, 780, 792, 755, 756,  
 mortise locks with a falling latch with the Nos. 64N, 66N, 74N, 64, 66, 74, 464, 466,  
 474,  
 mortise heavy locks with a falling latch with the Nos. 262½, 274½,  
 mortise bolt locks with the Nos. 342N, 344N, 342, 344,  
 mortise house door locks with the Nos. 602, 614, 642, 654,  
 mortise bolt locks, in which the key can be put in from both sides with the Nos.  
 302, 304,  
 mortise front door locks with the Nos. 222½, 234½,  
 mortise locks with a falling latch with the Nos. 414L, 414P, 416, 418P, 428,  
 standard rim locks with a falling latch with the No. 4000,  
 rim locks with bolts with the Nos. 4300, 4620, 4630,  
 mortise narrow locks with a falling latch with the Nos. 1000, 1004, 1008,  
 mortise locks with bolts with the Nos. 1049, 1040, 1308, 1300,  
 mortise room locks with the Nos. 1400, 1640, 1620, 1500,  
 mortise house door locks with the Nos. 1684, 1614,  
 mortise hall locks with the No. 2200½,  
 mortise locks with trap and bolt with the No. 2000½,  
 standard latch locks with trap and bolt with the Nos. 2614L, 2614 P, 2616, 416,  
 2618, 418, 2628, 428,  
 mortise bolt locks with flat keys with the No. 1254,  
 wardrobe locks with the Nos. 500, 501, 510, 511, 510S, 511S,  
 hunting locks with the Nos. 520, 521, 9220, 9221,  
 box and desk locks with the Nos. 540, 541, 5240, 5241,  
 drawer and cabinet locks with the Nos. 560, 561, 562S, 563S, 570, 571, 594, 595,  
 5260, 5261,  
 cabinet locks with flat keys with the Nos. 950, 951, 960, 961, 970, 971, 980, 981,  
 990, 991,

padlocks of bronze with the Nos. 8013B, 8213B, 8213F, 8013F, 813, 823, 833, 843, 853, 863, 873, 893, 814, 824, 835, 844, 854, 864, 874, 894, 8454, letter boxes and charity boxes with the Nos. 2 and 3.

Authenticated, Chemnitz, April 12, 1913.

The Clerk of the Royal High Court Chemnitz.

[L. S.]

(Signed)

LEHMANN, Secretary.

Smith-Haines, New York, N. Y.

UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF NEW YORK.

The Yale & Towne Manufacturing  
Company,

*Plaintiff,*

*against*

Frederick Ray, F. Arthur Haines, and  
Daniel R. Smith,

*Defendants.*

*Final Decree.*

The bill of complaint having been duly filed in the above entitled case on the 21st day of March, 1913; and the *subpœna ad respondendum* having been issued on March 21, 1913, and returned on or about the 22d day of March, 1913; and it appearing therefrom that the said subpœna was duly served upon the defendant Daniel R. Smith on the 21st day of March, 1913, and upon the defendants F. Arthur Haines and Frederick Ray on the 22nd day of March, 1913; and it appearing that the said defendants Frederick Ray, F. Arthur Haines, and Daniel R. Smith and each of them, have wholly failed to appear, plead or answer to the said bill of complaint, and are in default therefor; and it further appearing that on the 12th day of April, 1913, the plaintiff herein duly entered an order that the bill herein be taken *pro confesso* against the defendants Frederick Ray, F. Arthur Haines, and Daniel R. Smith, for want of a pleading, and that more than thirty days have elapsed since the entry of said rule, and that no further proceedings have been had in the said case, or taken since said rule and order was entered; and it further appearing that the plaintiff has expressly waived an accounting herein;

NOW, therefore, upon motion of Louis H. Porter, Esq., solicitor for the plaintiff, it is hereby

ORDERED, ADJUDGED AND DECREED

*First.* That the plaintiff is entitled to the exclusive use of the word or name "YALE" as a trade-mark and trade-name in connection with locks of all kinds, including therein all kinds and styles of locks, and among others timelocks, bank locks, combination locks, safe locks, padlocks, night latches, deadlocks, cabinet

locks, cylinder locks, lever-tumbler locks, warded locks, buckle locks, prison locks, asylum locks, and all other varieties and kinds and descriptions of locks.

*Second.* That the defendants Frederick Ray, F. Arthur Haines, and Daniel R. Smith, have violated the plaintiff's exclusive rights in and to the said word "YALE," by advertising for sale and selling a certain lock buckle not by or for the plaintiff made, but made by another manufacturer; to wit,—the Lynch Manufacturing Company, and containing in conjunction with said buckle a cylinder lock, which said defendants advertised for sale under the name of the "Yale Lock Principle Buckle."

*Third.* That the plaintiff have judgment against the defendants for the costs of this action, together with the disbursements to be taxed by the Clerk, and as taxed amounting to forty-two 80-100 (\$42.80) dollars, and that the plaintiff have execution therefor.

*Fourth.* That an injunction issue herein, perpetually enjoining the said Frederick Ray, F. Arthur Haines, and Daniel R. Smith, and each of their attorneys, agents, servants, workmen, and officers, and all claiming or holding through or under them, or in privity with them, from in any form or manner whatsoever making use in connection with any lock or portion thereof, not made by or for the plaintiff, of the word "YALE," or any other word or mark imitating or simulating the plaintiff's said trade-mark "YALE," or in anywise calculated to be mistaken therefor or confused therewith, and from selling or from offering for sale, or otherwise disposing of any lock, or part thereof, to which shall be applied in any form or manner whatsoever the word "YALE," or any other imitation or simulation of the plaintiff's said trade-mark "YALE," or any word or mark calculated to be mistaken therefor or confused therewith, except in connection with locks made by or for the plaintiff, and from making use in connection with the sale or offering for sale of any lock, or part thereof, not by or for the plaintiff made of the word "YALE" in any connection or manner whatsoever; and from doing any other act or thing in any degree calculated to enable, promote or encourage the sale or substitution of any lock not by or for the plaintiff made, as and for the lock of the plaintiff.

Dated, New York, May 15, 1913.

GEO. C. HOLT,  
U. S. D. J.

## INJUNCTION

### DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF NEW YORK

THE PRESIDENT OF THE UNITED STATES OF AMERICA,  
To FREDERICK RAY, F. ARTHUR HAINES and DANIEL R. SMITH, and  
to your attorneys, agents, servants, workmen, and officers, and to each and every  
of you, GREETING:

WHEREAS, It hath been represented to the Judge of our District Court of the United States for the Southern District of New York, in Chancery sitting, on the part of the Yale & Towne Manufacturing Company, plaintiff, in its certain bill of complaint, exhibited in our said District Court, on the Chancery side thereof,

before the Judges of said Court, against you, the said Frederick Ray, F. Arthur Haines, and Daniel R. Smith, to be relieved touching the matters complained of. In which said bill it is stated, among other things, that you are combining and confederating with others to injure the plaintiff touching the matters set forth in said bill, and that your actings and doing in the premises are contrary to equity and good conscience. And it being ordered that a Writ of Perpetual Injunction issue out of said Court, upon said bill, enjoining and restraining you, and each of you, as prayed for in said bill;

We, therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you, the said FREDERICK RAY, F. ARTHUR HAINES, and DANIEL R. SMITH, your attorneys, agents, servants, workmen, and officers, and each and every of you, and all claiming or holding through or under you, or in privity with you, that you desist from in any form or manner whatsoever making use in connection with any lock or portion thereof, not made by or for the plaintiff, of the word "YALE," or any other word or mark imitating or simulating the plaintiff's said trade-mark "YALE," or in anywise calculated to be mistaken therefor or confused therewith, and from selling or from offering for sale, or otherwise disposing of any lock, or part thereof, to which shall be applied in any form or manner whatsoever the word "YALE," or any other imitation or simulation of the plaintiff's said trade-mark "YALE," or any word or mark calculated to be mistaken therefor or confused therewith, except in connection with locks made by or for the plaintiff, and from making use in connection with the sale or offering for sale of any lock, or part thereof, not by or for the plaintiff made of the word "YALE" in any connection or manner whatsoever; and from doing any other act or thing in any degree calculated to enable, promote or encourage the sale or substitution of any lock not by or for the plaintiff made, as and for the lock of the plaintiff; until this Honorable Court, in Chancery sitting, shall make other order to the contrary. Hereof fail not, under the penalty of what the law directs.

WITNESS, the Hon. GEORGE C. HOLT,

Judge.

of the United States District Court, at New York, in said District, this 15th day of May, in the year of our Lord one thousand nine hundred and thirteen, and of our Independence the one hundred and thirty-seventh.

[Seal]

ALEX. GILCHRIST, Jr.,  
Clerk.





taxed amounting to Thirty-eight 80-100 (38.80) Dollars, and that the plaintiff have execution therefor.

*Fourth.* That an injunction be issued herein, perpetually enjoining the said General Automobile Supply Company, Inc., and each of its attorneys, agents, servants, workmen, and officers, and all claiming or holding through or under them or in privity with them from in any form or manner whatsoever making use in connection with any lock or portion thereof, or any article of builders' hardware, not made by or for the plaintiff, of the word "YALE," or any other word or mark imitating or simulating the plaintiff's said trade-mark "YALE," or in any wise calculated to be mistaken therefor, or confused therewith, and from selling or from offering for sale, or otherwise disposing of any lock or article of builders' hardware, or part thereof, to which shall be applied in any form or manner whatsoever the word "YALE," or any other imitation or simulation of the plaintiff's said trade-mark "YALE," or any word or mark calculated to be mistaken therefor, or confused therewith, except in connection with locks and articles of builders' hardware made by or for the plaintiff, and from making use in connection with the sale or offering for sale of any lock or article of hardware not by or for the plaintiff made of the word "YALE" in any connection or manner whatsoever; and from doing any other act or thing in any degree calculated to enable, promote, or encourage the sale or substitution of any lock or article of hardware not by or for the plaintiff made as and for the lock or article of hardware of the plaintiff.

Dated, New York, October 29, 1913.

LEONARD HAND,  
U. S. D. J.

Motor Car Supply Co., Chicago, Ill.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Tuesday, October 28, 1913.

Present: Hon. Kenesaw M. Landis, Judge.

Yale & Towne Manufacturing Company,  
A Corporation,

*Plaintiff,*

*vs.*

Motor Car Supply Company,  
A Corporation,

*Defendant.*

In Equity, No. 74.

This cause coming on to be heard at this term and it appearing to the Court that on the 26th day of September, 1913, more than thirty days prior to the entry of this decree, an order was entered herein whereby the bill of complaint was taken *pro confesso* and that the said order has never been set aside, it is thereupon ordered adjudged and decreed that such decree taking the bill of complaint *pro confesso*

shall be deemed absolute; that this Court has jurisdiction of the subject matter of this cause and of the parties hereto; that the allegations of the bill of complaint are true; that the equities of the case are with the plaintiff and that the plaintiff is entitled to the relief prayed, and that the defendant, Motor Car Supply Company, its agents, officers, attorneys, servants, employes, and assigns be and the same hereby, each and all, perpetually are enjoined and restrained from in any form or manner whatsoever using or employing upon or in connection with any lock or key, or any portion thereof, not made or marketed by the plaintiff, the word "Yale" or any other word or mark like the said word "Yale" and from using or employing in connection with the advertisement, announcement or sale of locks or keys not made or marketed by the plaintiff the word "Yale," or any like word, and from using or employing upon or in connection with the advertisement, announcement or sale of any lock or key not made or marketed by the plaintiff any word or words, mark or marks, device or devices calculated to enable the product of any other manufacturer to be sold as and for the product of the plaintiff, and that a writ of perpetual injunction issue accordingly.

It is further ordered, adjudged and decreed that the plaintiff is entitled to an accounting of and from the said defendant of the profits realized by it by reason of its wrongful acts in the premises, and to recover of and from the said defendant the said profits, together with such damages as the plaintiff has suffered by reasons of the defendant's said infringement and is entitled to a reference to a Master in Chancery to take, state, and report the said accounting. The plaintiff in open court, having elected to waive the said accounting of profits and damages, the Court finds the sum of One Dollar in lieu thereof, and it is further ordered, adjudged and decreed that the said plaintiff recover of and from the said defendant the said sum of One Dollar, together with the costs of this suit to be taxed and have execution therefor.

(Sgd.) KENESAW M. LANDIS.

A. J. & G. W. Anderson, Galesburg, Ill.

IN THE UNITED STATES DISTRICT COURT,  
FOR THE SOUTHERN DISTRICT OF ILLINOIS,

NORTHERN DIVISION

The Yale & Towne Manufacturing Company,  
*Plaintiff,*

*vs.*

A. J. Anderson and G. W. Anderson,  
Willis Manufacturing Company,  
and Fred Liebrich,  
*Defendants.*

In Equity.

This cause having been noticed for hearing upon various motions of the plaintiff this day filed, and upon the motion of defendants to dismiss the bill of complaint, all of which motions have been duly noticed, it is ordered that the said motion of the

defendants to dismiss the said bill of complaint be and the same is hereby overruled, and the defendant Andrew J. Anderson, named in the bill of complaint as A. J. Anderson, said defendant A. J. Anderson stating and claiming in open court to represent and appear for each and all other defendants herein, consenting on behalf of himself and each and all of the other defendants herein to this order and decree, and the cause coming on for final hearing upon the bill of complaint, answer of defendants and answers of A. J. Anderson and G. W. Anderson to interrogatories heretofore filed and propounded, the Court finds that it has jurisdiction both of the subject matter of the suit and of the parties thereto, and thereupon it is by consent of all parties to said suit ordered, adjudged, and decreed that the said defendants, A. J. Anderson, G. W. Anderson, Willis Manufacturing Company, and Fred Liebrich and each of them, their respective agents, officers, attorneys, servants, employes, and assigns, and each thereof be and they are hereby perpetually enjoined and restrained from in any form or manner whatsoever using or employing upon or in connection with any lock, key, safe, or wall safe, or any portion thereof, the word "Yale" or the word "Gale," or any other word or mark like the word "Yale" or like the said word "Gale," and from using or employing in connection with or in the advertisement, announcement or sale of locks, keys, safes, or wall safes, or any thereof, the word "Yale" or the word "Gale," or any like word, and from using or employing upon or in connection with the advertisement, announcement or sale of any lock, key, safe, or wall safe, any word or words, mark or marks, device or devices, calculated to enable the product of defendants or either of them to be sold as the product of the plaintiff, provided that this decree shall not apply to any product made or marketed by the plaintiff, and bearing or exhibiting the word "Yale" under authority of the plaintiff or prevent the sale of such product, and that a writ of injunction issue to the above effect.

And the plaintiff having waived an accounting of profits and an assessment of damages from, by or against the said defendants and each of them, it is ordered that plaintiff do have and recover from said defendants the sum of One Dollar nominal damages in full of all profits and damages in the premises, and do have execution therefor; and further, that plaintiff do have and recover from defendants its costs in this suit to be taxed, and have execution therefor, and it is further ordered that the above decree for profits and damages and costs be and the same is hereby satisfied.

October 1, 1913.

HUMPHREY,

*Judge.*

We consent to the above decree.

The Yale & Towne Manufacturing Company,  
by Frank F. Reed, its solicitor.—*Plaintiff.*

A. J. Anderson, G. W. Anderson, by A. J. Anderson, his agent, Willis Manufacturing Company, by A. J. Anderson, its agent, Fred Liebrich, by A. J. Anderson, his agent.—*Defendants.*

E. T. Fraim Lock Co., Lancaster, Pa.

## OPINION

UNITED STATES  
CIRCUIT COURT OF APPEALS  
SECOND CIRCUIT

<p>The Yale &amp; Towne Manufacturing Co. Complainant—<i>Appellant</i>, <i>vs.</i> Benjamin S. Alder, Defendant—<i>Appellee</i>.</p>
--

Before  
WALLACE,  
LACOMBE and  
TOWNSEND,  
*Circuit Judges.*

Appeal from decree dismissing complaint in suit for unfair competition, consisting of the imitation of a padlock manufactured by complainant and of its catalogue number. Decree reversed at the close of the argument.—WALLACE, J. (*Orally*):—

We are prepared to dispose of this appeal now. In cases like this, where unfair competition in trade is charged, based upon the manufacture and sale by the defendant of an article in simulation of one previously put upon the market by the plaintiff, when specimens of the articles are before the court and there is no question of their authenticity, the court can judge of the resemblance between them, and whether purchasers are likely to be deceived by the resemblance, and the testimony of experts or of dealers is of little assistance. A comparison of the exhibits satisfies us beyond any doubt that the defendant has so closely copied the plaintiff's padlock in form, size, coloring, lettering, and details of finish that his articles are likely to induce purchasers to buy his padlocks supposing them to be the padlocks of the plaintiff. Retail dealers and the trade generally will no doubt recognize differences, and are in no danger of being misled by any resemblance of identity between the articles; but the question is whether their customers, the ordinary purchasers who buy from the retail dealer are likely to be deceived; and that they are we are thoroughly convinced.

Many of the features of the plaintiff's padlock were separately a fair subject of appropriation by rival manufacturers, because they were not original with the plaintiff; but the plaintiff was the first to assemble them together in the concrete form in which its padlock has become known to the public as its product; and while we cannot say that the appropriation by the defendant of this particular feature or that particular feature would have been unfair, we can say that when all of the prominent ones have been appropriated and so assembled together with slight variations in some of them that altogether they produce the same general effect, and the ordinary purchaser would not be apt to discover the difference, enough appears to establish unfair competition. The defendant has with a purpose taken the design and dress of the plaintiff's padlock. He has carefully copied it, differentiating his own from it in minor details, probably intending to escape the charge of infringement; but he has gone a step too far when he has produced a padlock

which to casual observation is substantially identical in appearance with the plaintiff's. His apparent purpose was to extend his trade with retail dealers and supplant the plaintiff's sales to such dealers by furnishing them with an article which could be sold readily to customers as the article made by the plaintiff. When the defendant sold his locks to the retail dealers at a considerably less price per dozen than that which they were obliged to pay for the plaintiff's he placed a strong temptation before these dealers to buy his locks and increase their profits by selling them to customers wanting to purchase the plaintiff's higher priced locks; and we are constrained to believe it was intentionally and deliberately done in order to increase his trade at the expense of the plaintiff's.

The evidence in the record shows a laxity of business morality among lock manufacturers in appropriating the form, dress, and general appearance of each other's products which is not commendable, and which it is to be hoped does not exist in other trades; but this evidence and the argument based upon it cannot influence the court in a case where infringement is clear and the public are likely to be deceived, and they as well as the plaintiff are entitled to protection.

In accordance with this opinion, the following Final Decree has been entered in the U. S. Circuit Court, upon the mandate of the Circuit Court of Appeals, definitely determining our right to protection in the exclusive use of this style of padlock.

#### DECREE

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, That the decree of said Circuit Court be and it hereby is reversed with costs in this court, taxed at the sum of \$254.84 and in the Circuit Court, and that a decree issue enjoining the defendant, his agents, attorneys, employees, servants, and workmen and each and every of them, from selling, offering or exposing or advertising for sale, and from causing to be sold, offered, exposed or advertised for sale, the particular padlock complained of in the bill of complaint herein and of which "complainant's exhibit defendant's padlock" is a specimen or any padlock so similar to the padlock of which "complainant's exhibit complainant's padlock" is a specimen as to be likely to deceive prospective purchasers as to the origin or manufacture of the same, and from applying to said padlocks in advertisements, or in any other manner, the catalogue number 815 or any colorable imitation of complainant's catalogue number 805.

Eagle Lock Co., Terryville, Conn.

## DECISION

SUPREME COURT  
NEW YORK COUNTY

<p>The Yale &amp; Towne Manufacturing Co.,  <i>Plaintiff,</i>  <i>against</i>  Eagle Lock Company,  <i>Defendant.</i></p>
---

*Decision.*

This case having come on to be tried before me at Special Term, Part IV, of this Court, on the 18th day of October, 1909; and the plaintiff having appeared by Messrs. John G. Milburn and Louis H. Porter, its counsel; and the defendant having appeared by Messrs. Antonio Knauth and James L. Suydam, its counsel; and the parties having submitted their proofs; and the trial having continued on the 19th, 20th, 21st, 22d, 25th, 26th, 27th, 28th, and 29th days of October, 1909, and on the 1st, 3d, 4th, and 5th days of November, 1909; and due deliberation having been had:

I now make and file my decision in writing, as follows:

*First.* The plaintiff is a corporation organized under the laws of the State of Connecticut, and engaged in the manufacture and sale within the State of New York, and throughout the United States, and elsewhere, of locks of various kinds, and in particular of cylinder rim night latches, and has acquired and enjoys a wide reputation and extensive market for the sale of said night latches.

*Second.* During the period from 1870 to 1884, the manufacture of said cylinder rim night latches was conducted by the plaintiff under United States Letters Patent, and no one else manufactured or sold night latches of similar construction.

*Third.* Beginning with the year 1885, other lock manufacturers throughout the United States commenced to manufacture, and have since continued to manufacture and sell cylinder rim night latches, which in shape, size, and general appearance, and dressing, closely resembled the night latches as manufactured and sold by the plaintiff. During said period the plaintiff sought to differentiate and distinguish its night latches from those of other manufacturers by modifying the dressing and appearance of its goods in various ways, and among others, by using an ogee collar or ring in place of the straight bevelled ring, and round knob on the case having milled edges. But said ogee collar or ring, and said round knob on the case having milled edges, have since been used generally by other manufacturers of night latches, and have ceased to distinguish plaintiff's night latches.

*Fourth.* Prior to the year 1892, the cylinder heads of all rim night latches as made by any manufacturer, were plain and smooth, and without marking or

inscription. In the year 1892, the plaintiff, desiring to still further differentiate and distinguish its goods from those of other manufacturers, commenced to mark in small incised letters the word "YALE" on the cylinder head of its night latches.

*Fifth.* Other manufacturers shortly thereafter marked the cylinder heads of their night latches with various names and trade-marks, inscribed in incised letters, with or without any incised lines in connection therewith.

*Sixth.* In the year 1902 the plaintiff, desiring to still further distinguish its goods from those of its competitors, marked its cylinder heads with a sunken panel having straight parallel side, and curved ends, with a stippled background, containing the word "YALE" in raised letters therein, and ever since the year 1902 it has continuously marked its cylinder heads of night latches in that way.

*Seventh.* The marking of the cylinder heads of the plaintiff's night latches with the above described panel containing the word "YALE" was strikingly different from the marking on any other cylinder heads as theretofore manufactured, and by its extensive use the said marking has become generally associated in the trade, and with customers and users of the plaintiff's night latches, as distinctive of the night latches manufactured by the plaintiff, and the said marking on the said cylinder heads has come to be generally recognized as distinguishing the night latches manufactured by the plaintiff from those of other manufacturers.

*Eighth.* The plaintiff has caused the outline of a panel, having the same outlines as the panel as used on its cylinder head, to be registered as a trade-mark in the United States Patent Office at Washington. Other manufacturers have used an outline of a panel of substantially similar shape in connection with articles of hardware, prior to its use by the plaintiff, and the plaintiff has not established a valid trade-mark in said outline.

*Ninth.* In the year 1905, the defendant commenced to manufacture and sell night latches of the same general shape, size, and appearance as those manufactured by the plaintiff, and having the cylinder head marked with a sunken panel having straight parallel sides and curved ends, and a stippled background, the said panel being of substantially identical appearance with the panel on the plaintiff's cylinder heads, but containing therein raised letters the word "EAGLE." The night latches manufactured by the defendant were of equally good quality as the night latches manufactured by the plaintiff.

*Tenth.* That the plaintiff thereupon remonstrated with the defendant against such marking on the cylinder heads of the defendant's night latches, and the defendant thereupon modified the appearance of the panel as placed on its cylinder heads, but continued to make night latches of the same general appearance as plaintiff's night latches, and having the cylinder heads marked with a sunken panel, the sides of which were slightly curved, and the ends straight, but retaining the sunken, stippled background, with the word "EAGLE" therein; and the defendant has continued to manufacture and sell, and is now manufacturing and selling night latches containing the said modified form of panel on its cylinder heads.

*Eleventh.* That the night latches as manufactured by the defendant, both in the original form of panel and in the modified, curved form, so closely resembled the night latches manufactured by the plaintiff as to be likely to mislead customers desiring to purchase the plaintiff's night latches; and the manufacture and sale of said night latches, having cylinder heads marked with a sunken panel containing the word "EAGLE" in either of the forms as heretofore made by the defendant, constitutes unfair competition.

## AS FINDINGS OF LAW

The plaintiff has no trade-mark right in the outline of, or the figure of panel.

The plaintiff is not entitled to any accounting for profits, or damages as demanded in the complaint.

The plaintiff is entitled to an injunction restraining the defendant from manufacturing or selling night latches of the same general style and appearance as the plaintiff's night latches, having the cylinder heads therein marked with the word "EAGLE" contained in a sunken panel having either straight or slightly curved sides as heretofore used by defendant, or in any other sunken panel so similar to plaintiff's panel as to be likely to mislead purchasers.

And I direct the entry of a decree enjoining the defendant as aforesaid.

Dated February 14, 1910.

JAMES W. GERARD,  
J. S. C.

In accordance with this decision the following Injunction Decree was entered at a Special Term, Part IV, of the New York Supreme Court, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City of New York, on the 14th day of February, 1910.

## INJUNCTION DECREE

<p>The Yale &amp; Towne Manufacturing Co., <i>Plaintiff,</i></p> <p style="text-align: center;"><i>against</i></p> <p>Eagle Lock Company, <i>Defendant.</i></p>	}	<p><i>Present:</i></p> <p>HON. JAMES W. GERARD, <i>Justice.</i></p>
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This action having been commenced by the personal service of a summons and complaint on the defendant; and the defendant having thereafter served its amended answer, and the action being at issue, and having come on for trial before Mr. Justice Gerard, at Special Term, Part IV, and having been tried on the 18th, 19th, 20th, 21st, 22d, 25th, 26th, 27th, 28th, and 29th days of October, 1909, and on the 1st, 3d, 4th, and 5th days of November, 1909; and the plaintiff having appeared by Messrs. John G. Milburn and Louis H. Porter, its counsel; and the defendant having appeared by Messrs. Antonio Knauth and James L. Suydam, its counsel; and the parties having submitted their proofs; and the trial Justice having made and filed his decision in writing, stating separately his findings of fact and his conclusions of law; and it appearing from such decision that the night latches as heretofore manu-



factured and sold by the defendants constitute unfair competition with the night latches as manufactured and sold by the plaintiff, and that the plaintiff is entitled to an injunction restraining the defendant from manufacturing or selling such night latches:

NOW, Upon motion of Louis H. Porter, attorney for the plaintiff,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, That the defendants, its agents, servants, and employees be and they hereby are perpetually and forever enjoined and prohibited from manufacturing or causing to be manufactured, or selling or causing to be sold, or offering for sale in any manner whatsoever, directly or indirectly, any cylinder rim night latches of the same general style and appearance as the plaintiff's night latches, having the cylinder heads thereof marked with the word "EAGLE" contained in a sunken panel having either straight or slightly curved sides as heretofore used by defendant, or in any other sunken panel so similar to plaintiff's panel as to be likely to mislead purchasers.

ENTER

J. W. G.

J. S. C.

William F. Schneider,  
Clerk.











KF 3189 Y3 Y17

Author		Vol.
Yale & Towne manufacturing co.		
Title	Copy	
History of the trademark (Yale)		
Date	Borrower's Name	

