

does that, the natural consequence of which is to enable that other person to deceive, and pass off his goods as somebody else's, for that he is answerable, and the same principle of preventing that which would deceive the ultimate purchaser is observed where the probability of deception arises, not from the imitation of a trade mark proper, but from copying the peculiar get-up of the plaintiff's goods, or from some similar act.

The infringement of a trade mark may consist in the adoption of the essential part of the plaintiff's trade mark by the defendant, and where there is no imitation of the essential part, a resemblance in particulars common to the trade does not constitute an infringement. But, on the other hand, the infringement may consist in the imitation of the general appearance of the plaintiff's mark, and where both trade marks are of composite character, it is possible that though no one particular mark has been exactly imitated, or the principal mark which has been reproduced cannot for some reason or other be protected as a trade mark, the combination may be very similar and likely to deceive, and will, therefore, be restrained by injunction. For the purpose of establishing a case of infringement it is not necessary to show that there has been the use of a mark in all respects corresponding with that which another person has acquired an exclusive right to use. If the resemblance is such as not only to show an intention to deceive, but also such as to be likely to make unwary purchasers suppose that they are purchasing the article sold by the party to whom the right to use the trade mark belongs. It is seldom that the mark employed by the infringer does correspond in all respects with that of the person whose rights he is attacking; the usual practice is to introduce some colorable variation.

Where a manufacturer has been in the habit of packing or getting up his goods in a peculiar and distinctive