

seems to me to be peculiarly in point, but there are several authorities in our own courts which uphold the same doctrine. In *Williams v. Spence*, 25 How. Pr. Rep. 307, Monell, J., says: "The only question to be determined therefore in this case is whether the labels, devices and handbills used by the defendants, as set forth in the complaint, are calculated to, and do, deceive the public into the belief that the soap that they are selling is the soap made and sold by the plaintiffs. * * * The oral evidence, that the labels, devices and hand-bills used by the defendants are calculated to deceive the public also preponderates, and an inspection of the respective labels, devices and hand-bills satisfies me that the public would be readily deceived and purchase the defendant's soap under the belief that they were purchasing plaintiff's."

In *Lea v. Wolf*, 13 Abbott (N. S.), 391, Mr. Justice Ingraham says: "*The color of the paper, the words used, and the general appearance of the words when used, show an evident design to give a representation of those used by the plaintiffs.* It is impossible to adopt any conclusion other than that the intent was to lead purchasers, from the general appearance of the article, to suppose that it was the original Worcestershire sauce which they were buying." See also *Cook v. Starkweather*, 18 Abbott (N. S.), 292. And in *Lockwood v. Bostwick*, 2 Daly, 521, it was held, "that a party will be restrained by injunction from using a label as a trade-mark, resembling an existing one in size, form, color, words and symbols, though in many respects different, if it is apparent that the design of the imitation was to depart from the other sufficiently to constitute a difference when compared, and yet not so much so that the difference would be detected by an ordinary purchaser unless his attention was particularly called to it, and he had a very perfect recollection of the other trade-mark." And in *Kinney v. Busch*, 16 Am. L. Reg. (N. S.) 597, Mr. Justice Van Brunt says: "A careful inspection of the labels in question shows beyond a doubt that those of the defendant were adopted in order to deceive the public into supposing when they purchased the cigarettes of the defendant's manufacture they were purchasing those of the plaintiffs. I am satisfied from the evidence in this case that the intention of the defendant has been from the first to

make an article as nearly as possible resembling that manufactured by the plaintiffs, and to put it off upon the public as the same article."

I am also satisfied that it was the intention of the defendant, in adopting the blue and tin-foil wrappers, and in printing on them the directions for use in language so closely resembling that employed by the plaintiffs, to impose upon the public and to lead purchasers to believe that in purchasing the defendant's article they were in fact obtaining the sapolio of the plaintiffs. In this connection the wonderful similarity of the color of the inside of the tin-foil wrapper, used by the defendant, with that used by the plaintiff, should not be forgotten. The whole case, to my mind, shows an intention on the part of the defendant to avail himself of the reputation which the plaintiffs had acquired in the market for their sapolio, by their enterprise and ability and by the large expenditures which they had made in bringing the sapolio to the attention of the public.

It appears that the plaintiffs have been for many years engaged in manufacturing sapolio, that the article has acquired a great reputation, and that the plaintiffs have expended very large sums of money in advertising. The evidence shows that the defendant, after analyzing a cake of sapolio, and ascertaining how it was made, set about making an article similar in character, color and appearance to that of the plaintiffs. This he may possibly have a right to do, but when the court finds that the defendant, after having possessed himself of the secret of the manufacture of the plaintiffs, has in addition coined a name much resembling sapolio, in appearance, and which he admits is a fancy name, having no particular derivation or signification, and has then proceeded to encase his cakes of saphia in wrappers also closely resembling the plaintiffs', both in their external and internal appearance, as to color, size, and partially as to inscription and directions for use, the court has in my judgment the power to interfere, and should exercise its power. It is claimed that the plaintiffs cannot have an exclusive right to use tin foil or ultra marine blue colored paper, in putting up their article, as such paper is much used for ordinary commercial purposes. This is true, but the cases cited show that the courts will interfere