

it put the letters "B. S. Co." instead of plaintiffs' "D. S. Co." I do not observe any difference between the two labels, either in size, character of letters, number of letters per line, number of lines, colour of paper, or position upon the suspenders; I discover no difference except that in defendants' label they have used the letter "B" instead of "D," and that in the signature or printed initials at the bottom they have changed the "D" in "D. S. Co., makers," to "B," making it "B. S. Co., makers." It would appear, therefore, if defendants' intention has any bearing upon the case, that the adoption of these features of plaintiffs' methods sheds a light upon the object of the defendants in using the letter "B" on the button and in the stamping, which is the only part of the case we have now to deal with, because defendants have since action abandoned any right to use the label.

Mr. Jones in his able argument commented on the fact that plaintiffs when deciding to bring action, or when feeling that they were aggrieved, took no exception to anything but the label. At that time, when writing the letter in question to the defendants, the plaintiff W. L. Doran complained only of the use of the label, not of the button. I think that at that period, interpreting his condition of mind as matters then stood, the more manifest infringement—the label—overshadowed in importance the infringement in respect of the button, so that he did not dwell then upon that infringement. It is since then that the use of the label has been abandoned.

Mr. Jones has argued that this is a matter to be entirely determined by the eyesight of the Judge; that I sit in the place of the public. That is true in a sense; but I must use more than my eyesight. In a case like this I may also use my sense of hearing. If for example there be a similarity of sound, that has to be considered; because the reputation that the trade mark acquires in the public mind is a reputation which may reach the public mind through various faculties. Take, for example, a blind person, who has never seen the letter "D," or an illiterate person. He may be told that there is a good suspender known as the "D" suspender. That person would from his sense of hearing acquire the knowledge of the use of the letter "D." Again, an honest salesman, if asked for "D" suspenders, might easily think that "B" suspenders were asked for, owing to the similarity in sound of the two letters.