

Taking the words in their entirety, I am unable to recognize any similarity in appearance or sound, either at all or within the prohibited limit.

No ordinary person reading the two words could mistake the one for the other. . . .

Perhaps it may be suggested that each trade mark conveys the same idea, namely, that the eye glasses will stay on, but the hyphen after the syllable "Shur" prevents it being sounded like "sure," and leaves the whole hyphenated word as a purely meaningless fancy word coined for the purpose of a trade mark.

Again it was urged that, inasmuch as plaintiffs had in connection with their trade mark "Shur-On" referred to their goods in advertisements by such words as "On to stay on" . . . etc., it was not permitted to defendants to use a word that would be a colourable imitation of any of those sets of words. But it does not appear that plaintiffs have acquired any exclusive rights to use any of these sets of words. Their registered trade mark is in respect of the word "Shur-On" only, and in this action they complain of a colourable imitation of that word only, and that is the only case which defendants are . . . called upon to meet.

For these reasons, I am of opinion that plaintiffs have failed to prove an infringement of their trade mark "Shur-On," and that the action should be dismissed.

In regard to the question of costs, I am of opinion that defendants adopted the trade mark "Sta-Zon" because of plaintiffs having described their goods as "On to stay on," etc., and with the unworthy object of thereby acquiring the benefit of the market which plaintiffs had developed for their goods, and therefore are not entitled to costs.

FEBRUARY 16TH, 1906.

DIVISIONAL COURT.

MURPHY v. BRYDEN.

Promissory Note—Accommodation Makers—Sureties—Renewal—Consideration—Evidence—Promise of Holders as to Non-liability—Failure to Obtain Signature of Principal Debtor as Co-Maker.

Appeal by plaintiffs, a firm of private bankers, from judgment of CLUTE, J., at the trial, dismissing the action,