

New York. Nov. 17. 1884.

Lyman Brown Esq.

Sir:--

Whether or not the word "Shaker" as applied to the various manufacturers of the United Society of Shakers, can be registered as a trade-mark, is a question submitted to us.

The principle that no generic name, or a name merely descriptive of an article of trade, or of its qualities, ingredients or characteristics, can constitute a trade-mark, the exclusive use of which is entitled to legal protection, has many times been announced by the courts.

Thus, in a case where "Taylor's Persian Thread" was the subject-matter, an injunction was granted against the defendant using said words, only for the reason that his packages and labels, as a whole, imitated the plaintiff's.

In a case where the word "Yankee" as applied to soap was involved, its use in peculiar devices and labels in imitation of the trade-mark used by the plaintiff was alone inhibited by the court.

In a case where the plaintiff in ^{his} label called his medicine "Chinese Liniment" and the defendant his "Ohio Liniment", an injunction was granted but for the reason that the defendant's label was only a colorable variation as a whole from that of the plaintiff.

Without going into a careful examination of the matter without further instruction from you so as to determine whether or not the word "Shaker" would be a lawful trade-mark, we are inclined to believe that we could obtain registration

of the same in the Patent Office. If this course should be adopted we should be furnished with a set of labels or wrappers for each distinct article of merchandise sold by the Society of Shakers, so that each registration shall contain an exact embodiment of the trade mark as it is practically used.

In case of infringement the question of close imitation or substantial identity, if found to exist, would probably result in a favorable decision in a suit for violation of the registration.

Yours truly,

Wm. A. Phillips

Eccles

GREENSHIELDS, McCORKILL & GUERIN.

102 ST. FRANCOIS XAVIER STREET.

ADVOCATES.

Montreal Jan 29th 1885

Benjamin Gates Esq
Mount Lebanon
Columbia County
New York

My Dear Mr. Gates,
I enclose you here-
with duplicate copy of the
deed of assignment from Smith
to yourself of the trade mark
cheerful while you were
in Montreal with the certifi-
cate of the department of
Agriculture that the same
has been registered. This
with the papers you have
complete you take to the
deposits yours truly
W. Greenshields

GREENSHIELDS, McCORKILL & GUERIN.
ADVOCATES.

102 ST. FRANCOIS XAVIER STREET.

Montreal, 17 April 1885.

Benjamin Gates Esq
Lebanon.
New York

Dear Sir

Will you please send
me copy that I sent you
of transfer of Trade
Mark for Smith Bros.
to you. It is required
here in a low suit. I
will return it to you
I would like to get it
for Tuesday next
Yours very truly
J. Greenshield

15786
(9787)
G

GREENSHIELDS, McCORKILL, GUERIN & GREENSHIELDS,
ADVOCATES.

Green
J. N. GREENSHIELDS, O. McCORKILL,
EDMOND GUERIN, R. A. E. GREENSHIELDS,

1728 NOTRE-DAME STREET,

Montreal, 8 Jan'y 1886

Wm. White & Co. Bankers
City.

Gentl:

We enclose you the
transfers of Trade Accounts
to be made, made
to Mr Benjamin Gots
also such a little to
same.

Yours Very Truly

Greenshields & Co

10
\$4500

The Shakers are a Community of men
and women holding goods and property
in Common.

All goods made by this Community have
been known for 100 years as
Shaker Goods. Shaker seeds, Shaker
herbs, Shaker Flannels
&c. &c. This property in the name
Shaker is owned in Common by
all who have signed the Covenant
and are members of the Society of
Shakers. When the Society is null

Cat. No. 10270.51

they are such as shakers and when
the Society sees they action is brought
by the Trustees in behalf of the Shakers.
This is allowed by a statute of the
State of New York

January 26. 1885

Assignment
of Trade Mark

Charles A. Smith

 To

Benjamin Gates

Assignment

Whereas on the twenty sixth day of June Eighteen hundred and eighty four William Frost Smith of the City of Montreal, Province of Quebec, Canada, did obtain registration of a specific trade mark for "Shaker Blood Syrup" from the Department of Agriculture, Ottawa, which certificate bears the number 2289/10.

And whereas the said William Frost Smith did by deed of Assignment passed at Montreal on the twentieth day of October Eighteen hundred and eighty four assign and transfer to Charles Albert Smith of the said City of Montreal the full and exclusive right, title and interest in and to the said specific trade mark for "Shaker Blood Syrup" in and for the Dominion of Canada as set forth in the certificate No 2289/10 above named, and which transfer was duly registered and recorded with the Department of Agriculture at Ottawa on the twenty second day of October Eighteen hundred and eighty four on folio 2289, of Register 10

And whereas Benjamin Gates of Lebanon in the State of New York is desirous of acquiring the entire right, title and interest in and to the said specific trade mark;

Now this.

Now his indenture witnesseth; That for and in consideration of the sum of Three hundred dollars current money of Canada which the said Charles Albert Smith acknowledges to have had and received from the said Benjamin Gates ——— the said Charles Albert Smith has assigned, sold, transferred and set over, and by these presents does assign transfer and set over unto the said Benjamin Gates his heirs and assigns, the full and exclusive right, title and interest in and to the said specific trade mark for "Shaker Blood Syrup" in and for the Dominion of Canada as set forth in the Certificate No 2289/10 above named.

And the said Benjamin Gates accepts the within transfer as the full equivalent of the sum of three hundred dollars.

In Witness whereof the said parties hereunto set their hands and affixed their seals this Twenty fourth day of January A.D. Eighteen hundred and Eighty five

In the presence of
W. H. Wells

H. H. Wells

Witnesses to signatures
 of Charles Albert Smith
 and Benjamin Gates

Charles Albert Smith
 Benjamin Gates

in witness
 B G
 C A S



In accordance with
the 14th section of "the Trade
Mark & Design Act of 1879",
the existence of this assignment
has been duly recorded, this
day, on July 22nd 1889, of Register
No. 10, on which the Trade
Mark herein mentioned is
registered.

Department of Agriculture

Ottawa,

this 27th day

of January, A.D. 1888

Done
at
Ottawa
Deputy of the Min: of Agr.

January 24th 1885

Agreement

between

Charles Albert Smith
and Wm. Frost Smith

and

Benjamin Gates

This agreement made and executed this twenty fourth day of January eighteen hundred and eighty five (1885) between Charles Albert Smith and William Frost Smith both of the City and District of Montreal, parties of the first part and Benjamin Gates of the New Lebanon in the State of New York as Trustee for Society of Shakers party of the second part doth ceseeth;

That whereas the said William Frost Smith caused to be registered as his own property a trade mark for "Shakers Blood Syrup" and obtained a certificate for the same from the Department of Agriculture at Ottawa which certificate bears the number 2289/10
And whereas the Society of Shakers of Lebanon in New York State a body Corporate and politic represented by Benjamin Gates have instituted

instituted proceedings at
law praying for the can-
cellation of the said Certificate
and registration of the trade
mark on the grounds that
the same always was and
always has been the property
of the said Shakers—

" And whereas the said
parties of the first part
now admit and by these
presents do admit that
they have no right to the
said trade mark, which
fact they have ascertained
since the registration thereof,

" And that the said action
of the Shakers Society as
taken against the said parties
of the ~~second~~ part for the can-
cellation thereof is well found-
ed, but the said parties of
the second part in order to
avoid the expenses of litigation
are willing to and do pay
to the said parties of the
first part the sum of three
hundred dollars (\$300) in
consideration of which the
said parties of the first
part undertake and agree to
assign transfer and make
over

6 first
C. U. S.
M. J.

over to the said parties
of the second part the
said specific trade mark
and any and all rights
thereunder.

The parties of the first part
also admit that they never
had any right or pretension
to use the name "Mother
Siegle's Quinine Syrup" or to
print the same in any
books, pamphlets or cards
or in any advertising medium
whatever and that the sole
and only persons having
the right to use the same are
the said parties of the
second part.

In witness our hands hereto
at the city of Montreal the
day month and year first
above written.

Chas A. Smith
William F. Smith

Benjamin Gates

Wm. S. S. S.
In witness

* For the Shaker
Extracts of
Roots
B. G.
C. & S.
M. G.

Copy

Application

To the Minister of Agriculture
(Trade Mark and Copyright Branch)

Ottawa

I William Frost Smith, of the City of Montreal, in the District of Montreal and Province of Quebec, hereby furnish a duplicate copy of a Specific Trade Mark, to be applied to the sale of a proprietary medicine in accordance with sections 8 and 10 of "The Trade Mark and Design Act of 1879", which I verily believe is mine on account of having been the first to make use of the same.

The said Specific Trade Mark consists of the words "Shaker Blood Syrup" which may be printed on labels to be attached to bottles containing such proprietary medicine, or to the boxes or cases in which these are packed, or it may be in any form in the substance of the bottles themselves, or stamped or branded upon the cases and I hereby request the said Specific Trade Mark to be registered in accordance with the law.

I forward herewith the fee of \$25⁰⁰ in accordance with section 12 of the said Act.

In testimony thereof I have signed in the presence of the two undersigned witnesses at the place and date hereunder mentioned.

Montreal 24th day of

June A.D. 1884

Witnesses

(sigd) Richard Smith

" Gammie Riddell

(sigd) William Frost Smith

Certificate of Registration

This is to certify that this Trade Mark
(Specific) to be applied to a Proprietary Me-
dicine, and which consists of the words
"Shaker Blood Syrup", as per the annexed
pattern and application, has been regis-
tered in

The Trade Mark Register, N^o 10, Fol-
lio 2289, in accordance with

"The Trade Mark
and Design Act of 1879" By

William Frost Smith

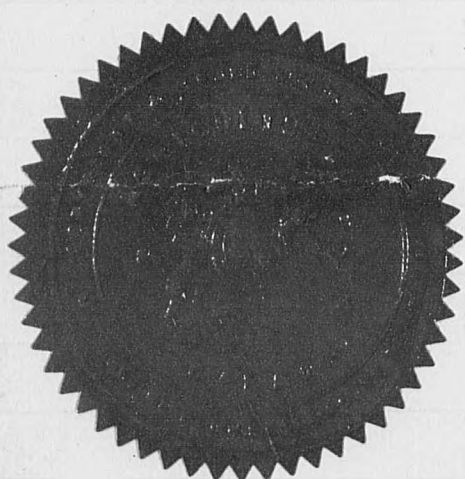
of the City of Montreal, Province of Quebec, on
the 26th day of June, A.D. 1884.

Department of Agriculture
(Copyright and Trade Mark
Branch) Ottawa, Canada,
this 26th day of June A.D. 1884

(signed J. Lowe
Actg.
Deputy Min^r of Agriculture

In Virtue of an Instrument produced accompanied by the Fee, the whole in accordance with "The Trade Mark and Design Act of 1879", the Trade Mark here entered on Folio 2289, of Register of Trade Marks, N^o 10, has been assigned by the Proprietor thereof William Frost Smith, of the City of Montreal, in the Province of Quebec, to Charles Albert Smith, of the said place, on the 26th day of June, A. D. 1884, for the consideration, as it appears in the same Instrument, of the sum of Two hundred and Fifty (\$250.) Dollars.

Department of Agriculture } (signed) J. Lowe
 Ottawa, this 22nd day of } Acty
 October, A. D. 1884 } Deputy of the Min^r of Agriculture



certified to be a true copy of the application, registration & extracts of assignments of the Trade Mark herein mentioned in Folio 2289 of Register No. 10.

Department of Agriculture }
 Ottawa, this 29th day of October } Acty
 A. D. 1884 } Deputy Min^r of Agr.

15,888-A

(9787)

G

Smith's Assignment
of Trade Marks
Canada

Alfred Reynolds

Assignment
of
Trade Mark
from
William F. Smith
to
Charles A. Smith.



Assignment.

Whereas, on the 26.th day of June, one thousand eight hundred and eighty-four, William Frost Smith, of the City of Montreal, Province of Quebec, Canada, did obtain Registration of a Specific Trade Mark for "Shaker Blood Syrup", from the Department of Agriculture, Ottawa, which Certificate bears the number 22891¹⁰.

And whereas, Charles Albert Smith, of the said City of Montreal, is desirous of acquiring the entire right, title and interest in and to the said Specific Trade Mark.

Now this Indenture Witnesseth that for and in consideration of the sum of Two Hundred and Fifty (\$250) Dollars Current money of Canada, the value _____ of

of which the said William Frost Smith does hereby acknowledge to have received from the said Charles Albert Smith in services rendered to him the said William Frost Smith, the said William Frost Smith has assigned, sold, transferred and set over and by these presents does assign, sell, transfer and set over unto the said Charles Albert Smith, his heirs and assigns, the full and exclusive right, title and interest in and to the said specific Trade Mark for "Shaker Blood Squap" in and for the Dominion of Canada as set forth in the Certificate N^o 2289¹⁰ above named.

And the said Charles Albert Smith accepts the within transfer as the full equivalent of the sum of Two Hundred and Fifty Dollars on account of his entire claim against the said William Frost Smith amounting in all to Four Hundred and Twenty Dollars
_____ for

wages from the 14th day of March 1884,
to the 1st day of October 1884, which
the said William Frost Smith does
herby acknowledge to be a correct
statement of his indebtedness to the
said Charles Albert Smith for his
said services. —————

In Witness Whereof,

~~The said parties hereto~~
~~have hereunto set their~~
hands and affixed their
seals this 20th day
of October, A.D. 1884.

William Frost Smith

Charles Albert Smith

Witnesses to the signature
of William Frost Smith: { E. W. Douglas
Wm Shaw

Witnesses to the signature of
Charles Albert Smith: { Hector Larocque
Sam [unclear]



In accordance with the
14th section of "The Trade
Mark & Design Act of 1875"
the existence of this assignment
has been duly recorded this
day, on October 22nd 1884, of Register No. 10,
on which the Trade Mark herein mentioned
is registered.

Department of Agriculture

Washington, this 22nd day of October

A. M. 1884.

Done

atly

Deputy Secy. of Ag.

OFFICE OF A. J. WHITE, LIMITED,

BRANCH : 67 ST. JAMES STREET, MONTREAL.

TO THE DRUG TRADE OF THE DOMINION OF CANADA.

For some time past the firm of Smith Bros., of Montreal, have been offering for sale and have sold a medicine pretending to be "Shaker Blood Syrup," and issued and circulated pamphlets in which it was stated that this Blood Syrup was prepared and manufactured by the Shakers of Lebanon. As soon as the fact came to the knowledge of the Shakers, they instructed their Counsel to take proceedings against this firm in damages, and to have cancelled and set aside the trade mark which had been registered by them for the medicine. Proceedings at law were taken by the Shakers, charging the said firm with fraudulently using and stating without authorization in their pamphlets that this medicine was prepared by the Shakers.

Shortly after this action was taken the firm in question became insolvent. On the 24th January last, Smith Bros. signed a declaration or agreement in which was contained, among other things, the following :

"And whereas the said Smith Bros. now admit, and by these presents do admit " that they have no right to the said trade mark, or to sell medicines as Shaker " preparations....." " And that the said action of the Shakers Society as " taken against us for the cancellation thereof is well founded....."

The Shakers upon this agreement being signed withdrew their action against Smith Bros. as they are irresponsible for any amount.

The original of the agreement is in the possession of our solicitors, Greenshields, McCorkin & Guérin, of Montreal, and can be seen by any person on enquiry.

The Shakers of Mount Lebanon are the only persons authorized by law to prepare and sell Shaker Extracts of Roots under the name and to prepare and sell "Mother Seigel's Curative Syrup," and the only persons authorized to deal in the said Shaker medicines is the firm of A. J. WHITE, Limited, 17 FARRINGTON ROAD, LONDON, ENGLAND, and 54 WARREN STREET, N. Y.; Branch : No. 67 ST. JAMES STREET, MONTREAL, and any medicines or drugs sold as Shaker medicines by any other persons firm than A. J. WHITE, Limited, are spurious and not the genuine Shaker medicines.

MONTREAL, January 27th, 1885.

BENJAMIN GATES,

Trustee for the Society of Shakers.