

NEW JERSEY

Court of Errors and Appeals

BETWEEN

EUREKA FIRE HOSE COMPANY,
Complainant (Respondent),

and

THE EUREKA RUBBER MANUFACTURING
COMPANY,
Defendant (Appellant).

} On appeal.

**Brief for The Eureka Rubber Manufacturing
Company, Defendant (Appellant).**

John V. B. Wicoff, Solicitor.

Edwin Robert Walker, of Counsel.

This is an appeal from that part of the decree advised by Vice-Chancellor Emery, and entered June 7th, 1905, which orders the issuance of a perpetual injunction, restraining the appellant from directly or indirectly using the word "Eureka" as part of its corporate title, or in any form or combination, on or in connection with the advertisement or sale of conductive hose; and also from using the word "Eureka" in its corporate title or otherwise, so long as it manu-

factures or sells or continues to manufacture or sell conductive hose.

FACTS CONCERNING HISTORY AND GENERAL LINE OF
BUSINESS CARRIED ON BY COMPLAINANT AND
DEFENDANT.

The proofs show that complainant was incorporated in the State of New Jersey on December 28th, A. D. 1899, under the name of "Eureka Fire Hose Company." That complainant is the successor of a company by same name, incorporated in the State of New York in 1875, "to manufacture fire hose and other knit and woven fabrics." The New York Company continued the manufacture of cotton jackets for cotton rubber-lined hose and linen hose from that time until the incorporation of complainant in New Jersey (pp. 20-21), mainly for the purpose of taking over the property and business of the "Eureka Fire Hose Company" of New York, which was subsequently done.

At the time of the trial before the Vice-Chancellor, the complainants showed that they were conducting a business of manufacturing cotton jackets for cotton rubber lined hose, linen hose, cotton belting, couplings and nozzles. They also lined the cotton jackets with a rubber lining made for them by the Voorhees Rubber Manufacturing Company. They make no rubber hose or rubber goods of any description (p. 253). The complainants advertise and sell cotton jackets, cotton rubber-lined hose and linen hose, which is the principal part of their business. In fact, it appears that two-thirds of the complainant's entire business is in cotton rubber-lined hose (p. 22, l. 22-25), and 20 to 25 per cent. of their entire business is in furnishing other manufacturers with cotton jackets for the cotton rubber-lined hose (p. 91, l. 32, 33). It also appears from the testimony that the only rubber hose sold by the complainant is a grade of hose like sample three, and a rubber suction hose (p. 95) - which is sold only in a

very limited extent, and all its rubber hose, it is admitted, is made by the Voorhees Rubber Manufacturing Company, and is just the same as the Voorhees people sell to their own trade (p. 140, l. 25-30). The complainant's witness, Stowe, admits that they do not sell much rubber hose (p. 45, l. 20-30). The complainant did not consider its rubber hose business of sufficient importance to allude to it except in one or two instances. Almost the entire testimony of the complainant was directed to the cotton rubber lined hose and linen hose business. Daniel O. Arnold, who is with the Chicago agents of complainants, who sell over \$100,000 worth of goods a year for complainant (p. 77, l. 30-32), and has sold complainant's goods for eighteen or twenty years, claims his firm has handled all the hose marketed by complainant, and testifies that they have only handled the cotton rubber-lined and linen hose. (See testimony, p. 81, l. 15-30.)

The defendant company was organized July 15th, 1902, and actually commenced business in February, 1903 (Lambert, p. 265), and manufactures what is known to the trade as a general line of mechanical rubber goods, which comprise rubber belting, rubber hose for steam, water, air, oil, rubber packings of several varieties, rubber valves, rubber mats and matings, cotton rubber-lined garden, mill and fire hose, and enamel rubber carriage drills, ducks and muslins (Lambert, p. 265). *The defendant does not manufacture or sell linen hose* (Lambert, p. 268, l. 6).

During the eleven months and a half that the defendant had been in business, it appears that the proportion of their cotton rubber-lined hose business to their entire business, was 7 per cent. of their total business. The enamel rubber carriage drills, ducks and muslins, during same period amounted to 47 per cent. of their entire business. (Lambert, p. 267.)

We shall first consider the pleadings and evidence with respect to the trade-mark rights of the complainant and their alleged infringement by the defendant;

secondly, with respect to the charge of unfair trade and competition; thirdly, with respect to the rights of complainant under the statute; and lastly, some authorities which we consider in point.

POINT I.

Complainant, in its bill, does not charge infringement of trade-mark rights; therefore, there can be no relief on that ground.

Pleadings.

The complainant's bill of complaint makes the following allegations:

Section 1 declares that a company under the name of Eureka Fire Hose Company, was incorporated in New York on May 15, 1875; that it made and sold fire hose composed of knit and woven fabrics, built up a large trade by advertising the name "Eureka;" and that that word became a valuable asset as a *trade name*.

Section 2 declares that the complainant was incorporated in New Jersey on December 25, 1899, and states its objects.

Section 3 declares that the complainant acquired the property and business of the Eureka Fire Hose Company of New York, continued to advertise its goods as "Eureka" goods, which continued to be known by the *trade name* "Eureka," and that such *trade name* was in the exclusive use of the complainant until the defendant committed the grievances thereafter mentioned, and that many of the complainant's customers had fallen into the practice, through inadvertence, of inserting the word "Rubber" in their statement of the complainant's name.

Section 4 declares that on July 15, 1902, the defendant was incorporated in New Jersey, that it has largely advertised its goods under the *trade name* "Eureka,"

which the complainant claims the exclusive right to use; that it has put upon the market fire hose and other goods stamped with the word "Eureka," and has in various ways used the word "Eureka" as *designatory of its products* which come in competition with complainant.

Section 5 declares that complainant and defendant each have an office in New York City, that much *confusion* has arisen from the use of the word "Eureka" by both companies with reference to the same line of goods, that by reason of the common practice of the complainant's customers in inserting the word "rubber" in its name, letters intended for the complainant have been delivered to defendant and opened by it.

Section 6 declares that the use of the word "Eureka" by the defendant in its corporate title *is likely to deceive*, and *has deceived*, the purchasing public into the belief that the goods of the defendant are the goods of the complainant; that it *has led* to the purchase of the defendant's goods in many cases where, except for such deception, the complainant's goods would have been bought; that in consequence thereof the complainant's trade *has been, is being, and will continue to be* unlawfully diverted; that the goods of the defendant *have been and are being* sold as the goods of the complainant and on the reputation acquired by the complainant for its goods; and that complainant *is and has been deprived* of large sales thereby.

Section 7 declares that the use of the word "Eureka" by the defendant, in advertising and marketing its goods, *is in unfair competition with the complainant*; that the assumption of the name "The Eureka Rubber Manufacturing Company" by the defendant was violative of the eighth section of our Corporations Act, or, if not so, it was, and the continued use of *is, in unfair competition with the complainant*.

Section 8 declares that the complainant has applied to the defendant to discontinue the use of the word "Eureka" and has met with refusal.

Section 9 (the amendment to the bill) declares that the defendant has simulated the complainant's device of red, white and blue parallel lines for the purpose of creating confusion and causing the public generally to believe the defendant to be identified with the complainant.

The certificates of registration of trade marks of complainant were admitted in evidence at trial subject to objection of irrelevancy by defendant.

The failure of the complainant to set out in its bill of complaint its claim of trade mark rights in "Eureka," and to charge infringement by defendant must, we claim, be fatal to complainant so far as its claim for relief on the grounds of trade-mark rights is concerned.

But if the Court disagrees with us on this point and believes that trade-mark rights of the complainant are before the Court, we pass to the consideration of our next point.

POINT II.

The complainant has not used the word "Eureka" in any way to entitle it to any protection with respect to conductive hose on the theory that it has a trade-mark right in the name.

The Vice-Chancellor found from the evidence that the complainant had used the word "Eureka" on all its hose, so that it had acquired the use to the name or word "Eureka" as a trade-mark.

We submit that this finding of the Vice-Chancellor was erroneous, and we propose to show to the Court from the exhibits and testimony that the complainant never used the word "Eureka" to designate its whole line of hose, but it was stamped on some of its hose to denote class, grade or quality.

COMPLAINANT'S USE OF "EUREKA."

a. "Eureka"—Used to designate number of plies of Circular Solid Woven Hose.

From an examination of the advertising circulars put in evidence by complainant (being marked 1 to 48 in red pencil), we learn that during the early months of the existence of the New York Company, the complainant's predecessor, it only put one size and grade of hose on the market, which was designated as "Eureka Fire Hose," and was a seamless fabric cotton, three-ply, rubber lined hose (circulars 1 and 2).

Circular 3, issued July, 1876, speaks of "Eureka Fire Hose," the three-ply, and "Paragon" Leading Hose, *similar in appearance and construction to the "Eureka Fire Hose," with the exception of its being two instead of three-ply.*

Circular No. 5, issued May, 1878, speaks of their "*new hose, the 'Red Cross' brand, a heavy one-ply seamless and rubber-lined cotton hose.*"

This seemed to be the first introduction of the "Red Cross" brand of seamless fire hose, the one-ply. The complainant's predecessor at this time seemed to be putting on the market only three brands of hose, viz.: "Eureka," a three-ply hose; "Paragon," a two-ply hose, and "Red Cross," a one-ply hose. No other brands seemed to have been introduced until after 1882, when no doubt the growing competition caused them to introduce other brands of different construction and quality of materials. But circular No. 44, pages 43 to 47, a catalogue issued after 1901, shows that "Eureka," "Paragon" and "Red Cross" were then made of materials equal in quality. Circular No. 44 describes the three brands of seamless circular solid woven fire hose as follows:

"Eureka." *The three-ply hose. The 2½-inch hose is known as "Eureka" brand of leading hose.*

The 3 and 3½-inch hose are known as the "*Eureka Fire Hose*." The 4 to 6-inch hose of this kind are known as "*Eureka Fire Boat Hose*."

"*Paragon*." *The two-ply hose*. The "*Paragon*" hose is similar in all respects to "*Eureka*" *except that it is two-ply instead of three*.

"*Red Cross*." *The one-ply hose*. It is made of materials equal in quality to "*Eureka*" and "*Paragon*," but is a single-ply hose.

The testimony also discloses that the trade understands that "*Eureka Fire Hose*" is always used to designate the three-ply brand of seamless circular woven fire hose as a distinction from "*Paragon*" fire hose, the two-ply, or "*Red Cross*" fire hose, the one-ply.

Mr. Boyd, who was with James Boyd & Brother, the Philadelphia representative of complainant, in speaking of the seamless circular woven hose, says:

Q. What about their two-ply hose?

A. The appearance, I am speaking of.

Q. Is there any two-ply hose made by them that is known by the name of "*Eureka*"?

A. Not by that brand alone.

Q. By what brand is it known?

A. Their two-ply hose is branded "*Paragon*," to give it that distinction.

Q. How is their three-ply branded?

A. "*Eureka*" only." (Page 175, l. 25.)

Again at page 177, line 25.

Q. Does that name "*Eureka*" apply also to the two and three-ply?

A. Yes; I told you before, we used the word "*Paragon*" to distinguish the two-ply from the three-ply.

Q. Then the term "*Eureka*" applies only to the three-ply?

A. The term "*Eureka*" applies only to the three-ply as a distinction.

Q. Now, the three-ply hose, as I understand you, is solid woven; is that right? *A.* Yes."

Again at page 178, line 15.

Q. (By Judge Lanning)—I understand you to say, then, that the hose that is known by the distinctive name "Eureka" is solid woven; am I right?

A. The hose that we know and order as "Eureka" is solid woven and three-ply."

Charles N. Candee, the complainant's Canadian witness, says:

Q. Are the Eureka cotton fire hose described in this circular the ones made by the complainant?

A. Yes.

Judge Lanning—The circular will speak for itself. What is the reference to it?

Mr. Lindabury (reading)—"Eureka fire hose, strongest and most durable fire hose in the world. In active service in all the principal fire departments on this continent. The celebrated high-grade brands of seamless cotton mildew-proof fire hose. "Eureka" brand, a triple hose, "Paragon" brand, a double hose, "Red Cross" brand, a single hose. Circular seamless woven hose of distinct plies solidly woven together. The most perfectly constructed cotton fire hose ever produced.'"

(Page 52, line 28.)

Joseph Perley, the ex-fire commissioner of New York City, knew "Eureka" to be used to designate class and quality.

He says, at page 120, line 35:

Q. The testimony, Mr. Perley, shows that there are various kinds of cotton hose made by this company, the Eureka Fire Hose Company; there is the 'Paragon,' 'Peerless' and 'New Peerless' and others. Now, my question is, do you know what brands were used by the New York City Government?

A. They always used the 'Eureka' hose, the four-ply, the best hose manufactured.

Q. When was that done?

A. That was done during my administration, and it is being done to-day."

Eli Bates, the ex-fire chief of New York City (page 128, line 10), knew "Eureka" to designate a three-ply seamless rubber-lined hose. At 130, line 15, he says he knew "Red Cross" designated a single-ply hose and "Paragon" a two-ply.

Wies (pages 246 to 249, line 12) says that "Eureka" and "Paragon" hose for the last twenty years have been made in precisely the same way and woven in precisely the same manner except "Eureka" was a three-ply hose and "Paragon" was a two-ply hose. Within the last two or three years, however, a smooth interior ply was added to the "Paragon," making it now a three-ply hose, and later the same change was made in the "Eureka," making it a four-ply hose.

Eureka was here used in connection with a single kind of hose, viz., the seamless, circular, solid woven, cotton, rubber-lined hose, and designated the three-ply class.

The "Eureka" seamless, circular, solid woven hose was a class of three-ply hose for varied use. Of this class of goods we find made by complainant the following, viz.: fire hose, fire boat hose and water tower hose (Circular 44, page 43).

"Paragon," it must be remembered, always designated the two-ply of the same class of goods, *i. e.*, the solid woven hose. "Paragon Fire Hose," for instance, designated the two-ply seamless circular woven fire hose.

We respectfully submit that the complainant's use of the word "Eureka" with respect to its solid woven hose was to designate class and not origin, and hence not a valid trade-mark use.

b. *The complainant uses "Eureka" to designate the highest quality of each kind or class of its cotton rubber-lined and linen hose.*

The evidence and catalogues show that complainant was putting on the market several different kinds of

cotton rubber-lined hose, viz.: "Seamless circular solid woven hose," "woven jacket hose," "knitted jacket hose" and "woven, knitted jacket hose," "woven hose."

The brands of these various kinds of fire hose were as follows (Circular No. 44):

1. Seamless circular woven hose.
 - a. "Eureka," a three-ply hose.
 - b. "Paragon," a two-ply hose.
 - c. "Red Cross," a one-ply hose.
2. Woven jacket hose.
 - a. Eureka "Peerless," "two woven jackets drawn together."
 - b. "Trojan," "two woven jackets drawn together."
 - c. "Monitor," "two woven jackets drawn together."
 - d. "Uncle Sam," "single woven jacket."
3. Knitted jacket hose.
 - a. "Surprise," two knitted jackets.
 - b. "Eagle," a single body hose.
4. Woven and knitted seamless circular hose.
 - a. "Eureka wove knit."
5. Woven and knitted jacket hose.
 - a. Eureka "New Peerless" or "New Peerless," inner knitted and outer woven jacket.
 - b. "New Surprise," inner knitted and outer woven jacket.

Two kinds of cotton rubber-lined mill hose are placed on market by complainant, viz: the seamless woven and wax and gum-twilled fabric (Circular 43, pp. 8-11).

The brands of each kind follow:

1. Seamless woven mill hose.
 - a. "Eureka."
 - b. "Trojan."
 - c. "Pioneer."
2. Wax and gum-twilled fabric mill hose.
 - a. "Eureka."

The complainant has three brands of cotton rubber-lined garden hose, viz: "Eureka," "Trojan" and "Pioneer" (Circular No. 43, p. 18).

The complainant has four brands of linen hose (Circular No. 43, pp. 12-14), viz: "Eureka Underwriters' Best," "20th Century Underwriters," "Premier" and "Trade."

"Eureka" was never used by complainant as a brand name on rubber hose.

The complainant does not make, but sells a limited amount of rubber hose (like sample 3), which is fire hose, and is branded "Carbolized Fire Hose," and the trade-mark of the Eagle on the hydrant surrounded with coil of fire hose and the words "Eureka Fire Hose Co." all within an oval ring. Stowe testifies that they sometimes sell suction rubber hose which is always stamped with the word "Eureka Fire Hose Co.," but he is not sure whether a brand is also stamped on it or no (p. 95).

(Cuts of the complainant's rubber hose may be seen on pages 58 and 59 of Circular 44.)

"Eureka" is only used on complainant's rubber hose as part of their full corporate name.

It is evident therefore that the evidence of complainant's witnesses must be limited to the linen and cotton rubber-lined hose.

Complainant's vice-president, Stowe, at page 105, testifies on the use of the word "Eureka" as follows:

"A. No, we don't separate them for use. The word 'Eureka' is intended to designate the highest grade of each of the kind of hose; the 'Eureka' is the highest grade of multiple wove; the 'Eureka Underwriter' is the highest grade of Underwriter hose, and the 'Eureka Mill' is the highest 'Eureka Mill Hose.' We use 'Eureka' without the combining words sometimes; for instance, on the garden hose we use the word 'Eureka,' which designates and means it is the highest grade of garden hose we make.

Q. (By Judge Lanning)—Is there anything

stamped on the garden hose to tell the public that that is the highest grade of hose you make?

A. It is known so to the trade.

Q. My question is, is there anything stamped on the hose that tells the public that that is the fact?

A. The word 'Eureka.'

Q. Does that tell the public it is the highest grade of hose you make? *A.* Yes.

Q. How?

A. The trade's knowledge of our reputation.

Q. It is only by the use of the word?

A. The word.

Q. There is nothing in connection with the word that tells that story? *A.* The highest grade?

Q. There is nothing in connection with the word that tells that story?

The Court—Appearing on the hose itself is the question of counsel.

Witness—No."

Stowe, at page 46, line 8, is speaking of the seamless circular woven fire hose when he says:

"*A.* Well, we deal in a great many other brands than we have here; almost all the hose bears our name 'Eureka Fire Hose Company'; then we have in addition to that our principal grade of fire hose, the highest grade of hose is known as the 'Eureka Fire Hose'; that is that brand (indicating) 'Eureka Fire Hose Company.'

Q. What name does it bear?

A. 'Eureka Fire Hose'; sometimes we use larger letters than that, not always this size, but sometimes larger.

Q. It has the name of the hose and the name of the company both?

A. The name of the hose and name of the company.

Q. And this one, then, is marked 'Eureka Fire Hose,' and then at the other end 'Eureka Fire Hose Company' is the one of which you sell the most?

A. It is our highest grade; I don't know that we sell more of it."

We have already seen that "Trojan" and "Pioneer" were the inferior grades of garden hose.

Stowe, however, at page 213, line 15, speaks of "Eureka" as designating the best grade of garden hose, as follows:

Q. But as to garden hose, I think Mr. Stowe has explained the occasion for the use of the tri-color upon 'Underwriters hose'; how came you to adopt it in the manufacture of your garden hose?

A. To meet competition we were forced to make some cheaper grades of garden hose, two cheaper qualities, and we put a distinguishing line in the 'Eureka' so that it could be distinguished from the others. In other words, the three qualities of hose look a great deal alike to anybody that wasn't posted and didn't know.

Q. On which grade do you put the tri-color?

A. On 'Eureka' grade only.

Q. The best grade of your garden hose?

A. The highest quality we make.

Q. Is there any better quality of garden hose made in the country, I mean of the cotton-rubber lined?

A. Not to my knowledge."

James Boyd, at page 169, testifies as follows:

Q. Which do you sell the most of?

A. We sell more of the 'Eureka' and also the 'Eureka Mill'; I guess it is divided between those two.

Q. How do they stand among other hose as to quality?

A. You mean how do the 'Eureka' goods stand?

Q. I meant those brands that you sell the most of, 'Eureka' and 'Mill Hose,' whether they are the best of their products or second grade?

A. Most certainly they are the best; the 'Eureka' is their best heavy hose, and their 'Eureka Mill' is their best mill hose; they have another brand that is made to conform to the underwriters."

John Brennan, at page 134, testifies as follows:

Q. What does the Pennsylvania Railroad use?

A. These last years since I have been fire marshal of the company, all the hose in use on the docks, ferries and stations around the Pennsylvania Railroad, are 'Eureka,' several brands; the 'Eureka' brand, down around the station on our main pump line, or all along our fire pump line, the station, the cove, and we use 'Eureka' and nothing but 'Eureka'; that is the best brand of their hose; then, I have 'Paragon,' and I have 'Mill Hose' in use around the various places where the pressure is light; where pressure is light I use 'Mill Hose,' made by the Eureka Fire Hose Co."

Eli Bates, the veteran ex-chief of the New York Fire Department, at page 128, testifies as follows:

A. I only knew it by the name of the 'Eureka,' which was three-ply seamless hose and rubber lined.

Q. And did you know that was the manufacture or product of the Eureka Fire Hose Company of New York or Jersey City?

A. I am speaking of New York City as we received it, as a three-ply hose, the 'Eureka,' that is what they called it, the 'Eureka,' that designated the different kinds or quality they made.

Q. They did make different kinds and qualities, did they?

A. They did, but I never used either the 'Red Cross' nor the 'Paragon.'

Q. Did they have the 'Red Cross' at that time?

A. Yes; they had the 'Red Cross,' and 'Red Cross' on the hose.

Q. And did they have the brand known as the 'Paragon' at that time while you were in the department?

A. I won't say positively, but I think they did; I don't say positively they did, but I know them to manufacture them three brands, because I know they manufactured the 'Red Cross' in my time.

Q. Now, then, do you know whether the hose known by the name of 'Red Cross' was stamped 'Eureka Red Cross Fire Hose'?

A. I don't recall the words being put on, but I think there was a red cross on the hose."

From a study of the testimony in connection with the various brands of hose of complainant as set forth in their catalogues, we must conclude that "Eureka" was used by complainants to designate their highest grade of each kind of hose. The trade understood that "Eureka" mill, for instance, designated their best grade of mill hose. "Trojan" mill, their next grade and "Pioneer" mill their poorest grade.

We submit, therefore, that "Eureka," in its broadest sense, was used by complainant to designate their highest grade of each kind of hose, hence, as descriptive of quality, and not a valid trade-mark use.

c. Complainant never used "Eureka," either alone or in any combination of words, on its goods or in the advertisement thereof, to refer to its whole line of hose.

In this connection we beg to quote from the Vice-Chancellor's opinion, and show to the Court that he reached an erroneous finding of fact and the cause of it.

The Vice-Chancellor, at page 293, line 28, in his opinion, says:

"Several kinds of hose were made, differing in grade, quality and purpose of use, and to each of these varieties or brands a second or subsidiary trade name or trade-mark was given, except to the kind marked with the word 'Eureka' alone, which

was the best of each class of hose manufactured. In every other case the second or subsidiary name (usually called 'brand' in the trade) was used in connection also with the name 'Eureka,' sometimes in the entire name of the brand, as 'Eureka Peerless,' 'Eureka Wove Knit Hose,' 'Eureka Garden Hose,' &c. In some form the name or word 'Eureka' appeared on all their goods, and (except in a single instance) the name of the company, The Eureka Fire Hose Company, was also stamped on all their goods. This exception was the fire hose sold to the city of New York, where the brand name 'Eureka' was alone used. All of complainant's hose bore thus in some form the name or word 'Eureka.'"

Again, at page 294, line 20, he says:

"Many of the words other than 'Eureka' which were used on their different brands were merely descriptive and not the subject of an exclusive use, such as 'Eureka Water Tower Hose,' 'Eureka Fire Boat Hose,' 'Eureka Tank Hose,' 'Eureka Garden Hose,' 'Eureka Wove Knit Fire Hose,' &c."

It will be noticed that the examples of brand names given by the Vice-Chancellor are brands which we have seen in an earlier part of our brief refer to the highest grade or class of the various kinds of hose made by complainant. The Vice-Chancellor does not give a single example of a single brand or name of any of the inferior grades of the various kinds of hose. To illustrate our meaning, the Vice-Chancellor speaks of "Eureka Garden Hose," which designated the highest grade of garden hose made by complainant, but he has overlooked the fact that the complainant makes two inferior grades of garden hose, which it designates "Trojan" garden hose and "Pioneer" garden hose.

It is not difficult to see why the complainant did not produce samples of all its brands of hose and not only its highest grade of each kind of hose at the hearing

before the Vice-Chancellor. They wanted to make it appear that their whole line of goods was marked with "Eureka," either alone or with other words. They succeeded in convincing the Vice-Chancellor of that fact from the samples of hose introduced, but the evidence and exhibits do not substantiate the finding.

The complainant's vice-president and manager, Stowe, at page 46, line 8, says that complainant deals in a great many other brands than those produced before the Vice-Chancellor.

Again, at page 103, line 26, he testifies of brands not introduced in evidence:

"Q. I notice that on the coil of fire hose are printed these words: 'Eureka Fire Hose,' 'Paragon Fire Hose,' 'Red Cross Fire Hose,' 'Surprise Jacket Fire Hose,' 'Peerless Jacket Fire Hose' and 'Eagle Fire Hose.' Do you put all these brands on the market now? A. Yes."

Candee, at page 67, line 28, testifies of brands of complainant's hose, samples of which were not introduced in evidence:

"Q. What are their regular brands?

A. 'Eureka,' 'Paragon,' 'Red Cross,' 'Trojan,' 'Pioneer,' 'Surprise,' 'New Surprise,' 'Monitor,' 'Helmet,' these are all brands that occur to me.

Q. You have been dealing in all of these different brands, have you? A. A large number of them.

Q. All of them or not?

A. Yes, I think we have had all of those."

His evidence at page 64, line 30:

"A. You mean any goods, jackets we get that we do not actually stamp the word 'Eureka' on?

Q. Yes.

A. I know there are jackets that we do not actually stamp the word 'Eureka' on."

Lyman H. Howard, the Brooklyn agent of complainant, mentions a number of their regular brands, samples of which were not produced before Vice-Chancellor.

(See testimony pages 191 to 193.) The complainant was most careful to only introduce their highest grade (*i. e.*, the Eureka grade) before the Vice-Chancellor.

We now beg to refer to the advertisements, catalogues and circulars of complainant.

Although a number of periodicals containing advertisements of complainant were produced at the hearing before the Vice-Chancellor, yet only one, "The India Rubber World," was offered in evidence. (Testimony, 114-117 and 225; *Exhibit C 52*, p. 324. The advertisement of complainant in the "India Rubber World" is an example of the complainant's general policy of advertising, and it shows conclusively that they never advertised their hose as "Eureka" hose or goods, but sought to bring them before the public by their particular brand names. No more prominence being given to the "Eureka" than to "Paragon" or "Red-Cross" brands.

The forty-eight circulars and catalogues of complainant's goods introduced in evidence show conclusively that they did not use "Eureka" to designate their whole line of goods.

We do not find their hose referred to in any of their catalogues as "Eureka goods." They do not, for instance, refer to their "Paragon" brand of fire hose as "Eureka Paragon" fire hose.

It is true that Candee, who was with a Canadian rubber company that bought cotton jackets of the complainant and inserted therein a rubber tube of their own make and sold the finished product under their own name, testifies that the complainant's goods are known in Canada as the "Eureka brands of fire hose." Candee's company has for ten or eleven years had the sole agency of Canada for sale of complainant's hose. (P. 61, L. 30.)

It also appears that Candee's company, The Gutta Percha and Rubber Manufacturing Company of Toronto, Limited, had on its letter head that it manufactured the "Eureka Brands of Cotton Fire Hose." The Canadian company did not manufacture the cotton jackets, but bought from the complainant and after

lining them placed them on the market (page 50, line 22) under their own name (page 64, line 10).

The complainant certainly cannot claim any benefit from the use of the word "Eureka" made by the Canadian company.

We submit that the complainant has failed to show a trade-mark use of the word "Eureka" under this point.

d. *Complainant claimed a number of different trade-marks as evidenced by the certificates of registration of trade-marks with the commissioner of patents. p 96-105*

While we maintain that these certificates of registration were wrongly admitted by the Vice-Chancellor, yet they are important to show that the complainant divided its hydraulic cotton rubber-lined hose into various classes and to each for which it had secured a trade-mark.

1. For the hydraulic and fire hose we find the following certificates of registration of trade-mark:

Exhibit C 5—Certificate No. 5,593, of registration, on January 29th, 1878, of "Eureka" for hydraulic hose.

This registration was rendered void by case of *United States v. Steffens*, 100 U. S. 82.

Exhibit C 9—Certificate No. 23,616 of registration, on September 19th, 1893, of "Eureka" for hydraulic and fire hose.

The last certificate of registration of word "Eureka" may have been intended to apply to all cotton rubber-lined hydraulic and fire hose which they were then putting on the market, but we submit that the complainants have not shown that they used it then or at the time of trial on their whole line of cotton rubber-lined hydraulic and fire hose.

2. For the seamless fabric hydraulic hose we have the following certificates of registration of trade-marks:

Exhibit C 7—Certificate No. 17,641 of registration, on March 11th, 1890, of "U. S." in a circle for seamless one-ply cotton fabric hydraulic hose.

Exhibit C 11—Certificate No. 30,606 of registration, on October 5th, 1897, of the representation of an eagle, hydrant and coil of hose. The eagle with outstretched wings is represented in a standing position upon the top of a hydrant, which has a hose coiled several times around it. This trade-mark was used on seamless fabric hydraulic hose

3. For the woven fabric hydraulic hose we find two trade-marks, viz.:

Exhibit C 10—Certificate No. 26,345 of registration, on April 9th, 1895, of a trade-mark consisting of color lines spirally encircling the hose.

Exhibit C 14—Certificate No. 35,916 of registration, on February 19th, 1901, of a trade-mark consisting of red, white and blue color lines running longitudinally through hose.

4. For woven and knitted fabric hose.

Exhibit C 8—Certificate No. 19,167 of registration, on March 10th, 1891, of "Wove Knit."

5. For linen hydraulic hose.

Exhibit C 6—Certificate No. 17,107 of registration, on October 15, 1889, of "Eureka Underwriters."

POINT III.

The defendant has never used the word "Eureka" in any way to infringe upon the complainant's trade-mark rights in the word "Eureka" if any are found by the Court.

a. The defendant has never used the word or name "Eureka," either alone or with other words, as a brand name for any of its hose or goods.

At page 278 Lambert testifies:

"Q. Has your company ever used the word 'Eureka' as a brand name?"

A. No, sir."

(See also defendant's samples of hose in evidence and its preliminary catalogue, Exhibit C 50, page 320; and testimony page 270, line 25.)

The defendant had been in business for almost a year at the time of the trial, and not a single instance was disclosed at the trial of its ever having used "Eureka" as a brand name.

Boyd, the complainant's agent in Southern New Jersey, Eastern Pennsylvania and Delaware, testifies as follows:

"Q. Have you ever seen any hose of the defendant company put upon the market stamped with the word 'Eureka' as a brand. A. I have not.

Q. Have you in the trade ever learned or heard that the defendant has put upon the market any hose stamped with the brand 'Eureka'?

A. I have not." (Page 181, line 15.)

The complainant admits there has been no imitation of their "Eureka" solid woven multiple hose.

The evidence of James Boyd on this point is:

"Q. How many manufacturers in number, about, are there of hose of a similar character to those two brands you spoke of, the 'Mill Hose' and the 'Eureka'?

A. Well, similar to the 'Mill Hose' there are a great many.

Q. Give us an estimate.

A. When I say a great many—

Q. A dozen, or two dozen, or what?

A. I should judge a dozen or fifteen anyhow.

Q. And of the 'Eureka'?

A. There is no concern that makes a hose exactly like the 'Eureka' solid woven multiple hose." (Page 169, line 20.)

b. The defendant has never used the word "Eureka" in any way on any of its hose except as part of its corporate title, "The Eureka Rubber Manufacturing Company."

Defendant's Branding of Rubber Hose.

The defendant has always branded its rubber hose in two places, one at each end of each fifty-foot section, about three feet from the end (p. 272, l. 7-10). This brand is in the form of a rectangle about three inches wide and four inches long. The rectangle is subdivided longitudinally into three rectangles of about an inch by four inches. One of the small rectangles is red and the words "The Eureka Rubber Manufacturing Co." are stamped on it. The middle rectangle is white and the brand name is stamped on it, *i. e.*, Acme or Buffalo, etc. The next rectangle is of blue with the words "Trenton, New Jersey," stamped on it. (Testimony, p. 219, l. 34; p. 220, l. 30; p. 271-272; and samples of defendant's rubber hose, 30 to 63.)

The defendant's regular brands of rubber garden hose in order of their quality are "Acme," "Buffalo," "Capital," "Durable," "Equality," "Favorite," "Guarantee." It has three special brands of rubber hose, "Quarto," "Quinto" and "Septo." (See *Exhibit C 50*, p. 320.) Its brands of rubber water or fire hose in order of their quality are "Acme," "Buffalo," "Capital," "Durable" and "Equality." Its brands of steam, brewers' suction and air hose are "Acme," "Buffalo," "Capital" and "Durable." (See *Exhibit C 50*, p. 320; Lambert's testimony, p. 269, l. 36; p. 270, l. 10.) The defendant has never used the name of "Eureka" as a brand name for any of its hose or goods. (Lambert's testimony, p. 278, l. 6; Boyd's testimony, p. 181, l. 20.)

The complainant has not a single kind of rubber hose that is branded "Eureka." The testimony discloses only two kinds of rubber hose that is put on the market by complainant, *viz.*, a rubber fire hose like sample 3 and a rubber suction hose (p. 95).

For the manner of branding complainant's rubber hose see sample 3 and Circular 44, p. 58.

Branding of Defendant's Cotton Rubber-Lined Hose.

The defendant's cotton rubber-lined hose is marked to show the source of manufacture. With the exception of cotton rubber-lined garden hose, all the cotton rubber-lined hose manufactured or put upon the market by defendant is marked with their distinctive brands and their full corporate name. (Testimony, p. 270, l. 33-37; p. 278, l. 15-25; p. 283, l. 25-32, and *Exhibit C 50*.) The cotton rubber-lined garden hose of defendant is not stamped with their full corporate name, but has distinctive color lines of purple or orange and green running through the entire length of hose (p. 283, l. 25-32; p. 289, l. 20-35).

The defendant makes four brands only of cotton rubber-lined fire, mill and garden hose. (See Lambert's testimony, p. 269, and *Exhibit C 50*.)

They are in order of their grades:

- "Admiral,"
- "Commodore,"
- "Ensign,"
- "Gunner."

The defendant does not make or sell linen hose. (See testimony, p. 268, l. 2-6.)

The complainant's brands of cotton rubber-lined and linen hose may be found at pages 11-12 of our brief, and complainant's method of branding cotton rubber-lined hose is explained in the testimony at pages 96, 97, and we submit there has been no infringement by defendant of complainant's trade-mark rights in "Eureka" if the Court shall have found any such rights.

We pass now to the charge of unfair trade or fraudulent competition made by the complainant.

POINT V.

The complainant did not substantiate by the evidence its charge that defendant had been guilty of unfair trade or competition.

The decree of the vice-chancellor orders that an injunction issue restraining the defendant from using the word or name "Eureka" in corporate title of the defendant or otherwise, so long as it manufactures or sells or continues to manufacture or sell conductive hose.

This part of the decree is based on much broader grounds than the use of the name of the defendant on the goods themselves. The Vice-Chancellor bases his decree on two grounds.

First, that irrespective of complainant's right to any exclusive use of the word as a trade-mark, the defendant's use of the name or word "Eureka," in connection with its corporate title, as describing or indicating the origin of its goods manufactured in competition with complainant, constitutes unfair trade or competition.

Second, that the selection of the name and use of the name is in violation of the eighth section of the Corporation Act, because it leads to uncertainty or confusion.

We shall, under this head, consider, first, how the complainant's goods were known to the trade and public; secondly, how complainant was known, and lastly, the acts of defendant that are said to constitute unfair trade or competition.

a. How were complainant's hose or goods known to the trade or public?

1. The goods and hose manufactured by complainant or its predecessor, were not generally known to the trade under the name of "Eureka goods."

This is contrary to the finding of the vice-chancellor, but we hope to substantiate our claim from the evidence.

The vice-chancellor, in his opinion, says:

"It is clearly proved by complainant that the goods manufactured by the New York Company, and by complainant as its successor, were, at the time of the defendant's incorporation, generally known in the trade under the name of 'Eureka' goods." (P. 293, l. 1.)

Lambert's evidence on this point is:

Q. You have named a number of other companies that manufacture cotton rubber-lined hose. Can you tell whether cotton rubber-lined hose is known in the market generally by the names of the makers, or by the name of the brand?

A. Well, to my knowledge, the well-known brands are; that is, the brands that have been any length of time on the market are probably better known by their specified brands than by the names of the manufacturers. The brands not so well known I wouldn't make that claim for.

Q. Take, for example, the brand known as the Maltese Cross. By whom is that made?

A. Maltese Cross hose is made by the Gutta Percha and Rubber Manufacturing Company.

Q. And how is that brand known in the market?

A. Well, it is very well and generally known as Maltese Cross hose.

Q. Is that a cotton rubber-lined hose or a rubber hose?

A. Rubber hose.

Q. Is it known in the market as the Gutta Percha hose?

A. Well, that is a difficult question to answer yes or no to. It is a question I could answer to the best of my knowledge, tentatively; that is, tentatively as to the way in which the goods are known. I should say that to the great majority of buyers the goods were known as Maltese Cross; that is, to the fire departments, where the goods are used." (P. 273, l. 20.)

Again, at page 274, line 18, Lambert says:

"Q. Mr. Wies has said that the products of various manufacturers are known by the names of the manufacturers, without giving the names of the brands at all. What is your experience as to the method of designating brands of hose in the market; is it by the name of the manufacturer or by the name of the brand?

A. Where brands have been on the market for a sufficient length of time to be well known, or fairly well known, the goods are usually referred to and known by the particular brand used.

Q. How, in the market, is the hose manufactured by the complainant company designated the Paragon, known?

A. I should say it is known as Paragon hose."

And, again, at page 276, line 20, Lambert testifies as follows:

"Q. In the market, are the goods of the complainant company, the Eureka Fire Hose Company, known generally by their brand names or by the name of the company?

A. I should say that they were known generally by their brands, perhaps more so than any other manufacturer in the business."

Eli Bates, the veteran ex-fire chief of New York City, distinguishes between the various brands of complainant's hose (p. 128). He refers to hose by brand names. (See his testimony, p. 127, l. 20-22.) The "Baker Fabric" hose, Bates mentions, is a brand of the Gutta Percha and Rubber Manufacturing Company. It is evident that whenever Eli Bates refers to "Eureka" hose, he means the "Eureka" brand of the Eureka Fire Hose Company, which is their three-ply solid woven cotton rubber-lined fire hose. (Bates' testimony, pp. 122-128.)

The vast number of testimonials introduced by the complainant show that its hose is known to the trade by the particular brand names, viz: "Eureka," "Para-

gon," "Red Cross," "Eureka" Mill, "Trojan" Mill, etc. Most of the testimonials are on "Eureka" hose, but it will be observed that they refer to the brand of fire hose known as the "Eureka" brand. There are testimonials on "Paragon" hose and "Red Cross" hose, which do not refer to them as "Eureka" hose or "Eureka" brand or "Eureka" goods.

The Complainant's general agent, Boyd, for Southern New Jersey and Eastern Pennsylvania, on page 177, lines 20 to 30, on cross-examination admits that "Eureka" applies only to the three-ply hose. "Paragon," he says, is used to distinguish the two-ply hose from the three-ply. George A. Wies, the general sales agent of the complainant, in speaking of the hose of the Gutta Percha and Rubber Manufacturing Company, testifies on page 236 as follows:

Q. Are you acquainted with a brand of fire hose known in the market as the 'Maltese Cross'?

A. Yes, sir.

Q. What kind of hose is that?

A. It is what is known as a rubber fire hose.

Q. Not cotton jackets? *A.* No, sir.

Q. Is it a well-known brand in the market?

A. Yes, sir.

Q. Do you know who manufactures it?

A. The Gutta Percha and Rubber Manufacturing Company.

Q. Is that brand generally known by the name of 'Maltese Cross'? *A.* Yes, sir.

Q. Is it so known amongst dealers and buyers and the public generally, who use that kind of hose? *A.* So far as I know it is; yes, sir.

Q. Is it known by any other name?

A. No, sir; it is known by its brand.

Q. Do you know a brand of hose known as the 'Baker Fabric'? *A.* I have known of it; yes, sir.

Q. You have seen it?

A. I have seen some of it; yes, sir.

Q. Is it widely known in the market?

A. No, sir; I don't believe it is, to-day.

Q. Has it been in the past?

A. It used to be in the market.

Q. That was a name given to a special brand, was it? A. Yes; special particular brand.

Q. Do you know who made it?

A. I don't know the name of the concern; no, sir.

Q. Was it distinguishable from other brands?

A. Yes; it was.

Q. Was it a cotton hose rubber-lined?

A. Cotton hose rubber-lined.

Q. Was that brand known by any other name?

A. Not to my knowledge."

Note that the "Baker Fabric" hose is made by the Gutta Percha and Rubber Manufacturing Company of New York, admitted to be one of the complainant's chief competitors. We think that this evidence conclusively shows that the brand names of hose are used by trade to refer more generally to it than any other name.

It has been the general policy of the complainant and defendant to bring their hose and goods before the public under their particular brand names.

The defendant's policy is found in its preliminary catalogue (*Exhibit C 50*) and in the testimony of its manager at page 285, line 25.

"Q. By what general terms, if any, are the goods of the defendant company known to the trade?

A. I don't know whether I can answer the question. We have only been manufacturing goods for a year, Mr. Perkins; I don't know really by what name the trade would term our goods; we have sought to bring our goods to the attention of the public through our brands, particular brands, more than any other way."

The complainant's policy is gathered from its catalogues and advertisements, introduced in evidence.

The complainant's advertising circulars, and its advertisements in the various periodicals and trade journals

already referred to, give special prominence to the various brands of the complainant, no more prominence is given, however, to the brand "Eureka" than to "Paragon" or "Red Cross" or other brands. In not a single advertisement of the complainant prior to the commencement of this action, are the words "Eureka" or "Eureka goods" or "Eureka Hose," used to refer to the whole line of goods of complainant.

We respectfully beg to submit that the goods of complainant were more generally known to the trade by their brand names than in any other way, and that the complainant never made any other claim for them prior to this suit.

b. *The complainant's claim, that it has come to be known in the trade as "The Eureka Rubber Company" and "The Eureka Company," is not supported by the misdirected letters offered in evidence.*

The complainant introduced into evidence eight batches of letters, orders and telegrams (p. 202) in which it had been incorrectly addressed in respect to its corporate name. These letters, orders and telegrams were claimed to have been received by complainant during the years 1876, 1891, 1896, 1897, 1898, 1899, 1900 and 1901. (See testimony, pp. 202-207.) In all there are 738 letters, orders or telegrams which were put in evidence without the envelopes in which they were received (p. 203, l. 8-12), and it is evident that a number never passed through the mail, especially those addressed "Eureka" only.

Of these 738 misdirected letters, telegrams and orders the complainant is addressed in 591 of them as the "Eureka Hose Company" and in 21 of them as the "Eureka Fire Hose Manufacturing Company." We therefore have 126 letters, orders and telegrams received by complainant and its predecessor by which it was addressed in other ways than its correct corporate name, "Eureka Fire Hose Company," and by the incorrect

names "Eureka Hose Company" and "Eureka Fire Hose Manufacturing Company."

There are thirteen addressed "Eureka Rubber Company" and seventy-six of the letters, telegrams and orders addressed "Eureka" only. The seventy-six addressed "Eureka" are orders chiefly from other rubber companies, *e. g.*, thirty-nine of the seventy-six are from the Peerless Rubber Company of New York, whose place of business was 16 Warren street, just a block from the complainant's office. Thirty-six of the remaining thirty-seven orders addressed "Eureka" only are from eight different New York houses. To summarize, we have the 738 misdirected letters, telegrams and orders divided as follows:

"Eureka Hose Company,"	591
"Eureka Fire Hose Company,"	21
"Eureka,"	76
"Eureka Rubber Company,"	13
Miscellaneous ways,	27

During the eight years it has been addressed by ten different concerns seventy-six times as "Eureka," and during the same time thirteen times as "Eureka Rubber Company."

From such evidence how can it be said the complainant was generally known as "Eureka Company" or "Eureka Rubber Company"?

c. The defendant has not used the word "Eureka" in any way that constitutes unfair trade or competition with complainant.

1. "Eureka" is a common word, a *publici juris* term.

We submit that "Eureka" is not an arbitrary and fancy word, as claimed by the Vice-Chancellor.

"Eureka" is a Greek word and is said to have been used by Archimedes upon his discovery of alloy in gold. It was used by the State of California in its seal as early as 1848.

The dictionaries printed prior to 1875 show that "Eureka" had become a common generic word in the English language, of which fact the Court will take judicial knowledge.

But it is in evidence in this case that a company under the name of "The Eureka Waste Cleaning Company" was incorporated by special act of the Legislature in New Jersey in 1872, three years before the incorporation of the complainant's predecessor in the State of New York (page 261, line 15). Before the incorporation of complainant in the State of New Jersey twenty-seven additional companies had been incorporated in New Jersey with "Eureka" in their corporate names. They were:

1. Eureka Iron Mining Company.
2. The Eureka Lawn Mower Manufacturing Company.
3. The Eureka Fertilizer Manufacturing Company.
4. Eureka Electric Company.
5. The Eureka Motor Company.
6. Eureka Parchment Paper Company.
7. The Eureka Gas Light and Fuel Company
8. The Eureka Dairy Food Company.
9. Eureka Cigar Machine Company.
10. Eureka Vehicle Spring Company.
11. Eureka Packing Company.
12. Eureka Manufacturing Company.
13. Eureka Typewriter Company.
14. Eureka Can Opening Company.
15. Eureka Electro Manufacturing Company.
16. Eureka Chemical Company.
17. Eureka Land Association.
18. Eureka Flint and Spar Company.
19. Eureka Street Sweeper Company.
20. Eureka Car Replacer Company.
21. Eureka Valve and Brake Company.
22. Eureka Mining and Investment Company
23. Eureka Fire Proofing Company.

24. Eureka Cuspidor Company.
25. Eureka Banana and Developing Company.
26. Eureka Construction Company.
27. Eureka Blotter Bath Company.

(Pages 259 and 260.)

In addition to those already mentioned there were seven additional companies incorporated in New Jersey with "Eureka" as part of their corporate names prior to the incorporation of defendant. In other words, prior to defendant's incorporation thirty-six companies had been incorporated in New Jersey with the word "Eureka" in their corporate names.

Paul, in his work on trade-marks, classes "Eureka" among common words. *Paul on Trade-Marks*, §361.

We submit the Vice-Chancellor was in error in classing "Eureka" as an arbitrary or fancy word.

2. No fraud or fraudulent intent was shown on part of defendant, either in the selection of its corporate name or in any other act.

The defendant company was organized in July, 1902, by Mr. Elmer E. Green, William S. Hancock, Mr. Barker Gummere, Mr. George R. Cook and Mr. Edmund D. Cook (testimony, pp. 255-6. Mr. Hancock, who possibly never heard of the Eureka Fire Hose Company, gave Mr. Chamberlain, the lawyer who prepared the defendant's certificate of incorporation, the name the defendant company was to assume, viz.: "The Eureka Rubber Manufacturing Company" (256, l. 38). To make sure, however, that the name would not be objectionable, inquiry was made at the Secretary of State's office to ascertain whether the name "The Eureka Rubber Manufacturing Company" would be received by the Secretary of State as the name of a new corporation (p. 255, l. 32). Being assured that it was not objectionable, the incorporators adopted the name and proceeded to organize the company. In making the inquiry at the office of the Secretary of State the incorporators were

prudent and careful, and anxious not to infringe upon the rights of others. Who would suspect the incorporators of fraudulent or unfair dealing. The incorporators are men of the highest character.

The fact that the defendant's cotton rubber-lined hose business, the class of goods in which it comes in competition with complainant, was only seven per cent. of its total business (p. 283) is most persuasive that there was no intention on the part of the incorporators of fraudulently or unfairly competing with complainant when they selected their corporate title.

3. *At the time of the trial, the defendant had been competing with complainant for almost a year, and not a single case was shown of any one having been confused between the companies.*

The complainant only produced one witness, George M. Eckert, who claimed to have been confused by the names of the two companies. It is clear, however, that any confusion of mind on his part, and we doubt if he was in fact confused, was due to such gross carelessness on his part that the defendant is not chargeable therewith. (See his testimony, pp. 148-151.)

Hugh P. Matthews knew of the complainant and defendant, shows that he was not confused when he wrote defendant for sample of hose. (Testimony p. 114.)

Eli Bates would not be confused over the names of the complainant and defendant. His testimony on page 129, is:

"Q. And if you saw on the goods, or on advertisements, the name 'Eureka Rubber Manufacturing Company, of Trenton, New Jersey,' you would not take that product to be the product of the 'Eureka Fire Hose Company, of New York or Jersey City.'

A. No, sir; I would not."

Joseph P. Perley admits he would not be confused over the names of complainant and defendant (p. 122, l. 6-10).

John J. Voorhees never saw any connection between Eureka Fire Hose Company and Trenton, and admits he would not be confused over the corporate names of complainant and defendant (p. 142, l. 35; p. 142, l. 14).

4. *There is no resemblance between the branding or marking of the hose of the two companies.*

For complainant's mark on rubber hose, see sample 3, or Circular 44, page 58.

For defendant's mark on rubber hose, see samples of defendant's hose.

The Court will observe that there is no resemblance between the marks. In fact, the complainant uses an elliptical mark while the defendant uses a rectangular one.

The complainant marks their cotton rubber-lined hose with brand name (*i. e.*, Paragon, Red Cross, etc.), the design of an eagle on a hydrant, with the words "Trade Mark," the name of the company, "Eureka Fire Hose Company" and "Tested" to a certain pressure (p. 200).

For the manner of marking defendant's cotton rubber-lined hose, see this brief, p.

We submit, therefore, there is no resemblance in the hose made by the parties to this suit in the way it is branded.

5. *The red, white and blue only used by the defendant in an honest and legitimate manner.*

The vice-chancellor found that there had been no infringement of complainant's rights by the defendant's use of the red, white and blue.

What are the facts concerning the use of red, white and blue by the two companies? The complainant only used it in connection with its linen and cotton fabric hose by weaving longitudinally throughout the whole length of the fabric, red, white and blue threads, which

produced red, white and blue lines (p. 212). The complainant never used the red, white and blue in any way in advertising its business, or on a foot of rubber hose. The only use made of the red, white and blue, on its product by the defendant, is on its rubber hose by stamping them with three one by four inch plate near each end of each fifty-foot section of rubber hose (p. 271). It also uses the colors red, white and blue on its letter heads, catalogues, envelopes and business cards. (See *Exhibits C Howard 38, C 50, C 51 and C 57.*), but the complainant has never used the said tri-color in any such manner.

The complainant can not monopolize the colors of our flag to its own use. The defendant, it is submitted, has never used the colors red, white and blue in any way to deceive or confuse the purchasing public in purchasing defendant's goods for complainant's.

6. *Defendant has never used the word "Eureka" in advertising its goods or bringing them to the attention of the public, except in connection with its full corporate name.*

The only three instances where the defendant has used the word "Eureka" not in conjunction with the other words of its corporate title, are on its business cards, letter heads and in its preliminary catalogue, being respectively, *Exhibits C Howard 38*, page 319; *C 57*, page 323; and *C 50*, page 320.

The business card of defendant is an exact reproduction of its letter head. The cut of hose on both is a cut of rubber hose and not cotton rubber-lined or linen hose (testimony 287).

The defendant branded hose at the time of the adoption of the letter-head by having the brands encircle the hose (p. 271, l. 23). Of course, in showing a relief of the brands, it was impossible to have the full lettering appear, so that only the initial words of each line were used.

The use of "Eureka," not in conjunction with the defendant's corporate title in its preliminary catalogue, refers to the rubber hose, and rubber hose only of the defendants. (See p. 3 of Preliminary Catalogue.)

The corporate title of the defendant company is stamped on nearly every page of this catalogue. There certainly could be no confusion or deception over the use there made by the defendant, in view of the fact that the complainant never used the word "Eureka" to refer to any rubber hose it put on the market.

The defendant's method of advertising its goods is found on page xiii of the "India Rubber World," of December 1, 1903, being *Exhibit C 52*, and the defendant's advertisement is found on page iv of the same issue. (See printed book, p. 324.)

No one will say that confusion is likely to be caused by said advertisements.

7. Misdirection of letters to complainant has been less since incorporation of defendant.

The complainant sought to show that it was known to the trade as "The Eureka Company" or "The Eureka Rubber Company" by eight batches of letters, orders and telegrams, containing in all 738 letters, orders or telegrams, which do not use the complainant's correct corporate name (see testimony, pp. 202-207). These letters, orders and telegrams were offered without envelopes for the years 1876, 1891, 1896, 1897, 1898, 1899, 1900 and 1901. Of the 738 introduced, 591 were addressed "Eureka Hose Company" and 21 "Eureka Fire Hose Manufacturing Company," and 126 where the complainant is addressed in miscellaneous ways. It must be remembered that these misdirected letters cover eight years of time and are only a small fraction of complainants mail. (Wies testimony, p. 157, l. 25-30).

The complainant's business is extensive. Wies' testimony, p. 155.)

In 1876 it amounted to	\$70,500
In 1880 it amounted to	128,500
In 1885 it amounted to	270,150
In 1890 it amounted to	404,000
In 1895 it amounted to	522,000
In 1899 it amounted to	709,000
In 1900 it amounted to	766,000
In 1903 it amounted to	860,000

In 1903 defendant's business amounted to \$405,000 (see testimony, p. 382, l. 28).

No misdirected letters are introduced by complainant for 1902, but for 1903, after the defendant has commenced business they introduce two batches containing fifty-one letters in all, which are misdirected in some way, either by incorrect name or incorrect street address (see testimony, p. 227, l. 20—p. 231, l. 20; pp. 158-166). The misdirected letters introduced, prior to incorporation of defendant, averaged ninety-two letters per year, but since the incorporation of the defendant there were only fifty-one per year. It seems almost incredible that the complainant should receive only fifty-one letters which are incorrectly addressed as to corporate name or address in a year when it did \$860,000 of business. In 1900, when the complainant did a business of \$766,000 (p. 155), there were 129 letters incorrectly addressed to it. (Testimony, p. 203, l. 37, to p. 204, l. 14.) We must conclude from these facts that the incorporation of defendant has lessened rather than increased mistakes in letters.

The defendant's witness, Lambert, says that he has known of the interchange of misdirected letters between the Eureka Rubber Manufacturing Company and the Empire Rubber Manufacturing Company, both of Trenton, as often as two or three times a week, and even two or three times a day. As a business man he has observed that letters are frequently misdirected. (See testimony, pp. 278-279.)

8. Defendant has not imitated complainant's seamless solid woven cotton, rubber-lined hose, which was complainant's chief product and on which they made their reputation.

Voorhees' testimony at page 137, line 18, is:

"Q. Have you known of their 'Eureka' hose for some years? A. Yes, sir; from its beginning.

Q. Do you know whether it has been put extensively upon the market or not?

A. Probably to a larger extent than any other brand made."

Jacket cotton rubber-lined hose is made by at least a dozen different rubber companies, but complainant is the only company that makes the solid woven rubber-lined hose.

James Boyd, at page 169, line 20, testifies as follows:

"Q. How many manufacturers in number, about, are there of hose of a similar character to those two brands you spoke of, the 'Mill Hose' and the 'Eureka'?

A. Well, similar to the 'Mill Hose' there are a great many.

Q. Give us an estimate.

A. When I say a great many—

Q. A dozen, or two dozen, or what?

A. I should judge a dozen or fifteen anyhow.

Q. And of the 'Eureka'?

A. There is no concern that makes a hose exactly like the 'Eureka' solid woven multiple hose."

Again, at 177, line 15, Boyd says:

"Q. You have spoken of the fact, or at least you have stated, that the 'Eureka Fire Hose' is different in construction from any other hose in the market; you mean, I suppose, that the cotton jackets are different in construction, do you not?

A. I mean that the two and three-ply solid woven hose is different in construction.

Q. What do you mean by solid woven hose?

A. It has a binding thread uniting the two plies together, making a solid, homogeneous mass.

Q. Does that name 'Eureka' apply also to the two and three-ply?

A. Yes; I told you before, we used the word 'Paragon' to distinguish the two-ply from the three-ply.

Q. Then the term 'Eureka' applies only to the three-ply?

A. The term 'Eureka' applies only to the three-ply as a distinction.

Q. Now, the three-ply hose, as I understand you, is solid woven; is that right? A. Yes."

The defendant company was at liberty to make a solid woven seamless cotton rubber-lined hose like that put on the market by complainant, and by which complainant made its reputation. The fact that the defendant did not produce a solid woven hose is most persuasive of any attempt to imitate the complainant's products and unfairly compete with it in their sale.

9. *The defendant has not simulated the complainant's letter head.*

This will appear from an inspection of the two, which will be found on pages 322 and 323 of the printed case. Besides cuts of their respective mills, which are dissimilar in construction, appearing on the letter heads of both parties, the complainant has its trade-mark, consisting of an eagle with outstretched wings perched on a hydrant surrounded by a coil of hose, always in red on its letter heads. The defendant's letter heads have on them a small section of hose (shown to be rubber), with the words "Eureka," "Acme" and "Trenton, N. J.," appearing respectively in red, white and blue bands around the hose. Mere inspection of the letter heads will disclose no similarity between them.

POINT V.

The complainant is not entitled to relief by virtue of the provisions of the eighth section of the Corporation Act, because no confusion or uncertainty was proven to have been caused by reason of the defendant's corporate name.

The eighth section of the Corporation Act creates no new law. It is simply declaratory of a rule that Equity acknowledged before the provision became embodied in our statutory law.

The Court will not enforce this section unless confusion or uncertainty is caused among the customers of the older company. We submit that in our review of the evidence in the earlier part of our brief we have shown that complainant is not entitled to relief on this ground.

POINT VI.

The Law of the Case.

There are three grounds upon which the decree of the Vice-Chancellor is based, namely:

A. That complainant has the exclusive right to use the name or word "Eureka" as a trade-mark, which is infringed by defendant stamping its corporate name "The Eureka Rubber Manufacturing Company" of Trenton, New Jersey, on hose made by it.

B. That defendant's use of the name or word "Eureka" in connection with its corporate title, as describing or indicating the origin of its goods manufactured in competition with complainant, constitutes unfair trade or competition.

C. That defendant's selection of the name The Eureka Rubber Manufacturing Company and use of that name is a violation of the eighth section of the Cor-

poration act, because it leads to uncertainty or confusion.

We shall consider these three grounds in the order stated with respect to the law as applied to the facts of the case at bar, which were considered in an earlier part of this brief.

A. The first ground upon which the decree of the Vice-Chancellor is founded is, as we have seen, based on trade-mark rights of complainant in the word "Eureka."

We submit it was error for the Vice-Chancellor to have admitted evidence on the theory of trade-mark rights of complainant in the word "Eureka," which question was not put in issue by the pleadings, and of which the defendant had no notice therefrom.

See *Daniel's Chancery Pleading and Practice*, 6th Am. Ed., p. 852.

Parsons, Jr., v. Heston, 3 Stock. 155.

That part of the decree based on trade-mark rights of complainant in word "Eureka" is on an issue not raised by the pleadings, and, therefore, should not have been considered or decided.

See *Munday v. Vail*, 5 Vroom 418.

Van Sciver v. Bryan, 2 Beas. 434.

If this Court should agree with us that the question of trade-mark rights of complainant in the word "Eureka" was not properly before the Court, and not properly decided because of want of power to consider it, it is unnecessary for us to discuss this ground further. Inasmuch, however, as we have, in the first part of this brief, exploited the evidence with respect to trade-mark rights of complainant in "Eureka," we desire to cite several cases to show that in any event no trade-mark rights in the word "Eureka" were proven by complainant.

1. *The use of the word "Eureka" by complainant prior to the defendant's incorporation and to the trial before the Vice-Chancellor, was not of such a character or made under such circumstances as gave to the complainant the right to claim the exclusive use of the word "Eureka" as a trade-mark for conductive hose.*

(a.) We have shown in an earlier part of our brief that "Eureka" was used in connection with the complainant's seamless circular solid woven cotten rubber-lined hose, to designate the number of plies of which it was made, and in all classes of linen and cotton rubber-lined hose (except, possibly, the "Eureka" and "Paragon" brands of seamless circular solid woven hose, which were claimed to be of equal quality, with "Eureka" designating the three-ply and "Paragon," the two), "Eureka" was used to designate the best grade or highest quality of each class of hose; hence, in a descriptive sense, we shall consider these uses together.

The primary object in using a trade-mark *must* be to indicate origin or ownership. If the primary object in using the mark is to express class, grade or quality, it does not become a good trade-mark. (Paul on Trade-Marks, p. 28).

Letters, words or figures, affixed to merchandise, for the purpose of denoting quality only, cannot be appropriated by one to his exclusive use as a trade-mark.

This principle was pronounced by the United States Supreme Court in the case of *Amoskeag Manufacturing Company v. Trainer*, 101 U. S. 51.

This principle was approved in *The Royal Baking Powder Co. v. Sherrel*, 93 N. Y. 331, where an action was brought to restrain the defendants from using the word "Royal" in connection with flavoring extracts manufactured by them, plaintiff claiming the exclusive right to such use as a trade-mark. Plaintiff's predecessors began the manufacture of flavoring extracts in 1868 and made three grades or qualities which were designated as "English," "Royal" and "London."

"English" being their best grade. In 1873, "Royal" was used to designate their best grade, and "English" their second grade and "London" their third grade. Plaintiff, since buying and succeeding to the business, has continued the manufacture, using the word "Royal" as its predecessors had done.

Defendants in 1873 began the manufacture, in competition with plaintiff, of flavoring extracts which they designated "Royal Standard" extracts. The Court found that the plaintiff had no exclusive right to the word "Royal," which as used by them had no relation to the origin or ownership of the goods, and was only used to indicate quality.

It may be noted in this connection that in the case of *Raymond v. Royal Baking Powder Co.*, 85 Fed. Rep., it was held that "The word 'Royal' is capable of use as a trade-mark for baking powder, where it is applied to the whole manufacture of the party using it, and not to distinguish a particular grade of the goods. As thus used it is not a descriptive term."

In *Columbia Mill Company v. Alcorn*, 150 U. S. 460, it was ruled that a trade-mark must be designed in its primary object and purpose, to indicate the owner or producer of the commodity, and to distinguish it from like articles manufactured by others, and that the device or symbol employed cannot be sustained as a valid trade-mark if it is used for the purpose of identifying the class, grade, style or quality of the article. In that case, the word "Columbia" was employed to denote a particular grade of flour. It was held that the word did not indicate original manufacture or ownership, and under the proof as shown was used to designate a grade of flour.

In *Canal Company v. Clark*, 13 Wall, 311, 322, it was said that "the office of a trade-mark is to point out distinctly the right or ownership of the article to which it is affixed; or, in other words, to give notice who was the producer."

(b.) *The complainant is not entitled to trade-mark protection for "Eureka," simply because its predecessor registered under the trade-mark law the word "Eureka" for hydraulic and fire-hose.*

The registration of a trade-mark is simply an aid to the proof of its adoption.

It is the actual use of the trade-mark affixed to an article of commerce which only can impart to it an element of property. The mere declaration of a person, however long and however extensively published, that he claims property in a word will not make it his property. No title arises until the thing is actually on the market, stamped with his mark to indicate origin.

In the case of *Schneider v. Williams*, 17 *Stewart*, at page 396, Vice-Chancellor Van Fleet said: "Mere adoption of a mark or sign, and a public declaration, by advertisement or otherwise, that a person will, at a subsequent time, put a particular thing on the market, marked or distinguished in a certain way, creates no right. Until the thing is actually on the market, marked by the particular mark of the person intending to acquire a title, no property right in the mark arises."

Also see:

Howe Scale Co. v. Wyckoff, Seaman & Benedict, 198 *U. S.* 118.

It was said in *Hennessy v. Braunschweiger*, 89 *Fed. Rep.* 664, 668: "That registration under act of 1881 (*i. e.*, trade-mark act) is of but little, if any, value, except for the purpose of creating a permanent record of adoption and use of the trade-mark, or in cases where it is necessary to give jurisdiction to the United States courts."

(c.) *The complainant or its predecessor, in having adopted several trade-marks for hose, must fail in any claim it makes for any one of several supposed trade-marks.*

We have already seen that complainant claims several different trade-marks for hose, which we submit is not a good trade-mark use.

In the case of *Albany Perforated Wrapping Paper Co. v. John Hobery Co.*, 102 Fed. Rep. 157, the principal question presented to the Court by the bill and evidence was whether a manufacturer of a single article has the right to use and to be protected in the use of more than one trade-mark for that article.

The Court says, in the opinion: * * * "A trade-mark must denote origin. * * * How can that purpose be accomplished if a manufacturer, dealing in a single article, used a thousand different trade-marks to designate the article and its origin? Such use necessarily produces confusion, and fails of the single purpose of the trade-mark—to designate with certainty the origin of the product."

In *Candee, Swan & Co. v. Deere & Co.*, 54 Ill. 439, 457, it was said:

"No man can have more than one mark or brand,
* * * If the owner could have more than one trade-mark, by which to distinguish his property, great confusion and uncertainty would be produced to such an extent as to defeat the object in view."

(d.) *There can be no trade-mark rights in the complainant's corporate name.*

The Vice-Chancellor, in his opinion, says that inasmuch as complainant marked its goods with its full corporate name, "Eureka Fire Hose Company," as the manufacturer, that was sufficient to entitle them to trade-mark protection for the word "Eureka."

On this question, *Hopkins on Unfair Trade*, at pages 110, 111, says:

"There can be no trade-marks in a corporate name, for the conclusive reason that it is not, as such, applied to the subject matter of commerce. It is entirely erroneous to treat a corporate name as being a trade-mark."

Our position on this question is that equity will never protect a corporate name on the ground of trade-mark

rights. We do not claim that equity will never intervene to protect corporate names from imitations that are calculated to deceive the public, but the exercise of this power is an enforcement of the law of unfair competition and based primarily on the prevention of fraud. Corporate names or trade names are never protected from infringement unless fraud is proven to the court. We claim the complainant has not shown fraud or facts from which fraud can be inferred, but we will discuss this matter further under another head of our brief.

(e.) *The claim made by complainant that its goods were known generally as "Eureka Goods" does not entitle it to the exclusive use of the word "Eureka" as a trade-mark, because it does not apply that name to its goods.*

The purchasing public, by coming generally to bestow a certain name or designation upon goods on the market, cannot thus vest the dealer in those goods with a title to such name or designation; but the individual can only acquire such name or designation by himself adopting and appropriating it and applying it to his goods.

Blackwell v. Armistead, Fed. Case No. 1474.

Goodyear Rubber Co. v. Goodyear Mfg. Co., 21 Fed. Rep. 276, 278.

Goodyear India Rubber Glove Mfg. Co. v. Goodyear Rubber Co., 128 U. S. 598.

(f.) *Complainant, in any event, is not entitled to any relief on the ground of any trade-mark rights that the Court may find it has in the word "Eureka," because no infringement of them by defendant has been shown.*

Resemblance is necessary to constitute infringement of a trade-mark.

No fixed rule can be laid down as to the degree of resemblance necessary to constitute an infringement of a trade-mark. In determining this question, regard must

be had to all the circumstances of each case. The class of people who buy the goods or deal with the parties, and the places where the goods are usually exposed for sale, must be considered. If the resemblance is sufficiently close to deceive a person buying in the usual way and using ordinary caution, and cause him to purchase the goods of one manufacturer as and for goods of another, there is an infringement.

Paul on trade-marks, sec. 188.

In *McLean v. Fleming*, 96 U. S. 256, the United States Supreme Court said:

“Two trade-marks are substantially the same in legal contemplation if the resemblance is such as to deceive an ordinary purchaser giving such attention to the same as such a purchaser usually gives, and to cause him to purchase the one supposing it to be the other.

“The intention on the part of an alleged infringer to induce purchasers, through the use of a simulated trade-mark or dress, to buy his goods under the belief they are another’s, furnishes no ground for relief unless the similarity between the two trade-marks is of a character to convey a false impression to the public mind * * * and to mislead and deceive the ordinary purchaser.”

Centaur Co. v. Marshall, 97 Fed. Rep. 785, 790;

Citing McLean v. Fleming, 96 U. S. 254;

N. K. Fairbank Co. v. R. W. Bell Mfg. Co. 77 Fed. Rep. 869;

Kohn v. Steel Co., 89 Fed. Rep. 706, 713.

CASES RELIED ON BY VICE-CHANCELLOR TO SUPPORT HIS POSITION ON THE TRADE-MARK FEATURE OF THE CASE.

The Vice-Chancellor speaks at length in his opinion (page 295) concerning the case of *Newman v. Alvord*, 51 N. Y. 189. We beg to differ with the Vice-Chancellor in his statement that “the judgment in the case (i. e., *Newman v. Alvord*) was based on the plaintiff’s exclusive right to use the word “Akron” as their trade-mark. The Court in the “Akron” case did find that the

complainant had the right, to the exclusion of the defendants, to use the word "Akron" to designate their cement, or water lime (page 190), but not the exclusive right against other parties who might get their cement from Akron quarries (pages 194, 195), and could truthfully call it "Akron" cement.

The judgment of the Court was based not on any trade-mark rights the complainant had in the word "Akron," because it is submitted, "Akron" being a geographical term, is not subject to exclusive use as a trade-mark, but on *actual fraud* which the defendant was practicing in palming off its cement on the public by representing it to be taken from quarries located at Akron.

The basis of the decision of the Court in *Newman v. Alvord* is criticised in *Paul on Trade-marks, sec. 29, page 48*, in the following language:

The decision of the Court was correct, but should have been based on the ground of unfair competition on the part of defendant in fraudulently using the term "Akron" for cement not produced at that place (Akron, N. Y.), and not on the ground that the plaintiff had a trade-mark right in the name "Akron."

In *Hier v. Abrahams, 82 N. Y. 519*, also relied on by the Vice-Chancellor, it appears that plaintiffs sold a brand of cigars with labels on boxes "Hier & Alrichs," and beneath this name the word "Pride," in large letters, and "Havana" underneath. Defendant's label was "The Pride of Syracuse," and beneath that "Abrahams & Co." So far as appears from the case, "Pride" was used by complainants to denote origin, and applied to their whole line of that class of goods. The complainant did not use the word "Pride" to designate quality or grade of its cigars. It would seem from the evidence that only one grade was made. We therefore submit that this case differs from the one at bar in that the trade-mark in question was used to denote origin and

origin only, and was applied to the whole line of that class of goods put on the market by the complainant.

The case of *Ford v. Foster*, L. R. 7 Ch. App. 611 (1872), relied on by the Vice-Chancellor, is another case where the trade-mark claimed was applied to the entire line of a class of goods, and not to a part only, as in the present case. At page 612 of that case we have this statement of fact, on which the decision was based: "The plaintiff always marked his shirts on the inside at the back, on the collar band, with the following mark, enclosed within a line:

R. Ford's Eureka Shirt, London,

to which he added, after the passing of the *Merchandise Mark Acts*, the words *Trade-mark*, and the plaintiff always described his shirts in all advertisements and elsewhere as "*Ford's Eureka Shirts.*"

We have already shown that in the case at bar the complainant never used the word "Eureka" to designate its whole line of hose, either in stamping it on the hose or in its catalogues and advertisements. This case clearly differs from the one at bar.

In *Saxlehner v. Eisner & M. Co.*, 179 U. S. 19, cited by the Vice-Chancellor, it would seem from reading the opinion that complainant's claim to the exclusive use of the word "Hunyade" was sustained, not so much on the ground of trade-mark rights therein, but on the ground of fraud and unfair competition by the defendant, not only using the word "Hunyade" in connection with the name of its goods, but also in copying the color, shape and label of complainant's bottles. Here, again, "Hunyade" was used as the name of complainant's entire product.

The case of *Menendez v. Holt*, 128 U. S. 514, also cited by the Vice-Chancellor in support of his trade-mark theory, differs from the case at bar in the following particulars:

1. The defendant in the case cited had admitted by his answer the existence of the trade-mark in question.

2. The defendants admitted that they had used it, but denied that complainants were its owners (page 516).

3. That complainant had extensively used and advertised the said trade-mark as indicating "the origin of a special selection and classification of a certain flour, requiring skill, judgment and expert knowledge."

We pass to the consideration of the second ground,

A Whether the defendant's use of the name or word "Eureka" in connection with its corporate title, as describing or indicating the origin of its goods manufactured or sold in competition with complainant, constitutes unfair trade or competition.

In considering this point we desire to state at the outset that

(a.) *The complainant's case must fail, unless it is established by clear and satisfactory proof that defendant has been guilty of unfair and fraudulent competition, in which the intent to deceive and to palm off its goods as the goods of the complainant is an indispensable element.*

"While fraud is presumed from a wrongful use of a trade-mark, it must be proven, directly or by inference in all cases of unfair competition, which do not involve a technical trade-mark."

Hopkins on Unfair Trade, p. 32.

In technical trade-mark cases, it is not necessary to prove fraud on part of defendant if infringement has been proven.

In cases of unfair competition the fraudulent intent must be shown by the evidence, or be inferable from the circumstances, while in trade-mark cases fraud will be presumed.

"There is this difference, however: The law of trade-marks is designed to protect primarily a property right, and, as incidental thereto, give redress for the injuries resulting from invasions of that right, a distinct, technical trade-mark being in itself evidence, when wrongfully

used, of an illegal act, while the jurisdiction exercised over cases of unfair competition in business is founded on the prevention of fraud."

Paul on Trade-marks, sec. 24.

In *Gorham Mfg. Co. v. Emery etc.*, 104 *Fed. Rep.* 243, it was held that fraud and deceit are the foundation of an action for unfair competition.

See also *Brown Chemical Company v. Meyer*, 139 *U. S.* 540.

Centaur Co. v. Marshall, 97 *Fed. Rep.* 785, and especially the illustrations at page 788, which the Court held could not be mistaken by the public in taking one for the other, and hence relief was refused.

In *Miller Tobacco Co. v. Commerce*, 16 *Vr.* 18, the distinction is made by our Supreme Court between a trade-mark case and one of unfair competition:

"Trade-marks are protected as such, as a species of property * * *. Intentional fraud in such case is not essential to entitle the owner to protection. The injury is complete if the same label or mark is used which recommends the article to the public by the established reputation of another * * *. To violate such right is a legal fraud."

"But there is another type of injury to the same substantial right, distinguished mainly by the essential feature presented, of actual fraudulent intent in its perpetration * * *."

The legal wrong is in fraudulently supplanting the maker of the genuine article by a false one sold as his own, whether it be by the adoption of his mark or by any deceit and false representation likely to deceive the public and accomplish that end, is material only in form. The injurious result is the same if the wrong be committed in either way. The cases differ only in their requisite of proof.

In *Van Horn v. Coogan*, 7 *Dick.* 380, where fraud was clearly proven, the Court said:

“The legal principles which must govern the decision of this case are established and familiar. The law not only allows, but encourages, fair, open and honest competition, but while it demands that the markets shall be open and free to all dealers, and that each shall enjoy the utmost freedom in competition, by fair and honest means with his rivals, it absolutely interdicts each from taking a fraudulent advantage of his rivals by dealing under false colors and selling his goods as those of his rival. In the language of Justice Knapp: ‘Rivalry of that kind is not fair dealing, it is closely akin to piracy.’”

In *Canal Co. v. Clark*, 13 Wall. 311, the United States Supreme Court says:

“To entitle a name to equitable protection as a trade-mark the right to its use must be exclusive, and not one which others may employ with as much truth as those who use it. And this is so, although the use by a second producer, in describing truthfully his product, of a name or combination of words already in use by another, may have the effect of causing the public to mistake as to the origin or ownership of the product. Purchasers, though mistaken, are not in such a case deceived by false representations, and equity will not enjoin against telling the truth.”

In *Potter B. and C. Corp. v. Pasfield Soap Co.*, 106 Fed. Rep. 914, where complainant called its soap “Cuticura,” while defendant called its soap “Cuticle.” The Court, in refusing the injunction, said:

“We have little doubt that in selecting a name which began with the first five letters of that applied to complainant’s soap, and which referred, as that did, to the skin, the defendant had some expectation that he might succeed in effecting some sales at least on the strength of complainant’s advertising, and if we were able to find anything on the box, wrapper, lettering or general get-up of the package, which might tend in any way to produce confusion

in the mind of the purchaser, we should not hesitate to grant the relief prayed for. But this element of attempted deceptive resemblance, usually prominent, and when prominent, controlling * * * is wholly wanting, and its absence is not supplemented by any proof that the use of the first five letters of the complainant's trade word is in itself sufficient to mislead."

"Fraudulent intent is necessary on the part of the defendant to represent his goods to be manufactured by some other person, who has used the same or very similar marks, and thus to deceive the public and injure the person already using the same trade-mark. * * * Thus, where William Robert Burgess manufactures 'Burgess's Essence of Anchovies,' which under that name had acquired great celebrity in the market, and his son William Harding Burgess began to manufacture a fish sauce which he called 'Burgess's Essence of Anchovie,' it was held he was not to be enjoined therefor, in the absence of any evidence that he was representing his own article to have been made by the older manufacturer." *Story's Equity Jurisprudence, sec. 951; Burgess v. Burgess, 17 Eng. Law and Equity, page 257 (A. D. 1853.)*

The decision of the United States Supreme Court, in the case of *Howe Scale Co. v. Wyckoff, Seamans & Benedict, 198 U. S. 118*, handed down after the decision of the Vice-Chancellor in the present case, is most instructive, as containing the latest expression of the highest court in our land on the question of unfair competition.

The question before the court was whether the use of the words "Remington-Sholes," or "Rem-Sho," as a name for a typewriter, and the words "Remington-Sholes Co., Mfrs., Chicago," on typewriters sold by defendant, and by them used in connection with the advertisement and sale thereof, was unfair competition with the older and well-known concern of typewriter

manufacturers, who claimed the exclusive use of the word "Remington" as applied to typewriters.

The case, it will be remembered, was tried, first, in the Circuit Court of the United States for the District of Vermont (for decision see 110 Fed. Rep. 520), from which an appeal was taken to the Circuit Court of Appeals for the Second Circuit, where a decree in favor of complainant, enjoining the use of the word "Remington," was made (for opinion see 122 Fed. Rep. 348). The defendant, the Howe Scale Co., then certioraried the case to the United States Supreme Court, where the decrees of the two lower courts were reversed.

Chief Justice Fuller delivered the opinion for the court, and at page 136 says:

"In the present case the decree enjoined the use, 'in any manner whatsoever,' of the designation 'Remington,' as the name, or part of the name, of any typewriting machine whatsoever manufactured by the Remington-Sholes Company, or defendant, or any person or concern, and from selling, offering, exposing or advertising for sale * * * in any manner whatsoever, typewriting machines manufactured by Remington-Sholes Company or by defendant, or any person or concern * * * by any designation of which the word 'Remington' shall constitute a part. This denies the right to use the personal name, rather than aims to correct an abuse of that right * * *. It is dishonesty in the use that is condemned * * *, and not the use itself."

At page 139 the Chief Justice continues:

"Doubtless Remington and Sholes, in using the name 'Remington-Sholes,' desired to avail themselves of the general family reputation attached to the two names, but that does not in itself justify the assumption that their purpose was to confuse their machines with complainant's, or that the use of the name was in itself calculated to deceive."

Again, at page 140:

“Having the right to that use (*i. e.* use of name), courts will not interfere where the only confusion, if any, results from a similarity of the names, and not from the manner of the use. The essence of the wrong in unfair competition consists in the sale of goods of one manufacturer or vendor for those of another, and if defendant so conducts its business as not to palm off its goods as those of complainant, the action fails.”

“As observed by Mr. Justice Clifford, in *McLean v. Fleming*, 96 U. S. 245, ‘A court of equity will not interfere when ordinary attention by the purchaser of the article would enable him at once to discriminate the one from the other.’ And by Mr. Justice Jackson, in *Columbia Mills Company v. Alcorn*, 150 U. S. 460, ‘Even in the case of the valid trade-mark, the similarity of brands must be such as to mislead the ordinary observer.’”

“And see *Coats v. Merrick Thread Company*, 149 U. S. 562; *Leggett & Meyers Tobacco Company v. Imzer*, 28 U. S. 182: We hold that, in the absence of contract, fraud or estoppel, any man may use his own name in legitimate ways, and as a whole or a part of a corporate name. And in any view, defendant’s name and trade-mark were not intended or likely to deceive, and there was nothing of substance shown in defendant’s conduct in their use constituting unfair competition or calling for the imposition of restrictions, lest actionable injury might result, as may confessedly be done in a proper case.”

(b.) *The fact that the complainant has always marked its hose with its own distinctive brand and its full corporate name, and that the defendant has always marked its goods with its corporate name and place of manufacture, and with different brand names and different marks, is most persuasive of the absence of any intent to pass off its hose as and for hose of the complainant.*

In *Goodyear’s India Rubber Glove Manufacturing Company v. Goodyear Rubber Company*, 128 U. S. 598,

604, the Court said: "There is no proof of any attempt of the defendant to represent the goods manufactured and sold by it as those manufactured and sold by plaintiff, but on the contrary, the record shows a persistent effort on its part to call the attention of the public to its own manufactured goods, and the places where they are to be had, and that it had no connection with the plaintiff."

In *Coats v. Merrick Thread Company*, 149, U. S. 562, the question before the court was one of unfair competition, and was founded on similarity of the ends of spools of cotton, put on the market by the two companies.

The Court, in refusing the injunction, uses the following language, at page 573: "Upon the whole, we think the plaintiffs have failed to prove a case of unfair competition or any illegal attempt of defendants to impose their thread upon the public as that of plaintiff's; that with the right to use the black and gold label, as other manufacturers have, and continue to use it, and with the same right to use the embossed numerals which the plaintiffs have, we think they have taken all the precautions which they were bound to take to prevent a fraudulent imposition of their thread upon the public, and that the decree of the court below, dismissing the bill, should, therefore, be affirmed."

(c.) *Inasmuch as the complainant's corporate name and the marks used by it on its hose were sufficiently different from the defendant's corporate name, and defendant's method of marking and putting up its hose, to enable the ordinary purchaser, using reasonable care, to distinguish defendant's from complainant's goods, the decree of the Vice-Chancellor should be reversed.*

In *Leggett and Meyers Tobacco Company v. Finzer*, 128 U. S. 182, the charge of unfair competition was based on the use of a star on tobacco by each of the parties.

The Court, on the question of similarity of the two stars, at page 184, says:

"The judgment of the eye upon the two is more satisfactory than evidence from any other source as to the possibility of parties being misled so as to take one tobacco for the other, and this judgment is against any possibility. Seeing, in such case, is believing, existing differences being at once perceived and remaining on the mind of the observer. There is no evidence that anyone was ever misled by the alleged resemblance between the two designs."

In *Howe Scale Co. v. Wyckoff, Seamans & Benedict*, 198 U. S. 118, 139, the Court said:

"The name 'Remington-Sholes Company' is not identical with or an imitation of 'Remington Standard Typewriter Company,' or 'Remington Typewriter Company,' or 'E. Remington & Sons.' Defendant's marks, 'Rem-Sho,' 'Remington-Sholes Co., Mfrs., Chicago,' are not identical with or an imitation of complainant's marks, 'Remington,' Large Red Seal, 'Remington Standard Typewriter, manufactured by Wyckoff, Seamans and Benedict, Ilion, N. Y., U. S. A.,' 'Remington Standard Typewriter.'"

(d.) *The complainant in any event is not entitled to enjoin the defendant from using the word "Eureka" in its corporate name if it does not stamp it on its hose, or use it in connection with the sale thereof.*

In *Howe Scale Company v. Wyckoff, Seaman & Benedict*, 198 U. S. 118, the United States Supreme Court, in an opinion rendered by Chief Justice Fuller, said at page 137:

"The principle that one corporation is not entitled to restrain another from using in its corporate title a name to which others have a common right, is sustained by the discussion in *Columbia Mill Company v. Alcorn*, 150 U. S. 460, and is,

we think, necessarily applicable to all names *publici juris*; *American Cereal Company v. Eli Pettijohn Cereal Company*, 72 *Fed. Rep.* 903; *S. C.*, 76 *Fed. Rep.* 372; *Hazelton Boiler Company v. Hazelton Tripod Boiler Company*, 142 *Illinois*, 494; *Monarch v. Rosenfield*, 39 *S. W. Rep.* 236."

"It is said that the use of the word Remington in the name 'Remington-Sholes' was unnecessary, as if necessity were the absolute test to the right to use. But a person is not obliged to abandon the use of his name, or to unreasonably restrict it. The question is whether this use is reasonable and honest or is calculated to deceive.

"It is a question of evidence in each case whether there is a false representation or not." *Burgess v. Burgess*, 3 *De G. M. & G.* 896.

"In *Turton and Sons v. Turton and Sons*, 42 *Ch. Div.* 128, plaintiffs had carried on the iron business as 'Thomas Turton and Sons.' Defendant began the same business as John Turton and Company, and finally took in his sons and changed the firm to 'John Turton and Sons.' Some confusion had arisen, and plaintiffs contended that there was no necessity for defendants to use their own names.

"Lord Esher said: 'Therefore the proposition goes to this length: that if a man is in business, and has so carried on his business that his name has become of value in the market, another man must not use his own name. If that other man comes and carries on business he must discard his own name and take a false name. The proposition seems to me so monstrous that the statement of it carries its own refutation.'

"And Lord Macnaghten said in *Reddaway v. Bonham*, *L. R. Appeal Cases* 1896, 199, 220: 'I am quite at a loss to know why *Turton v. Turton* was ever reported. The plaintiff's case there was extravagant and absurd.'"

The case of *Goodyear Rubber Company v. Goodyear's Rubber Mfg. Co.*, 21 *Federal Reporter*, 276, is important for the defendant, as in many respects it is similar to the one at bar.

We call the attention of the Court to the fact that the the reporter's head-note is incorrectly written, and ask the Court to examine the case. The decree of the Court adjudged that it could not use the complainant's name—"Goodyear Rubber Co.," but it did not restrain it from using its own corporate name—"Goodyear's Rubber Mfg. Co.," as the reporter has it.

In *Saunders v. Sun Life Assur. Co. of Canada* (1893,) 8 *Reports* 125, and *Paul on Trade-Marks* §170, and *Law Reports*, 1894, 1 *Chan.*, it appears that the Sun Life Assurance Company of Canada, duly incorporated in Canada, opened an office in London, where the Sun Life Assurance Company was established and was doing business. The latter sought an injunction against the former to restrain it from doing business in the United Kingdom under the name of the "Sun Life Assurance Company of Canada." It was held that, inasmuch as the mere user by the defendant company of its full name involved no misstatement of fact, and was not a fraudulent user, the defendant company was entitled to use in the United Kingdom its full corporate name, but that this right did not extend to the use of the name of "The Sun," or "The Sun Life," without the addition of the words "of Canada."

In *Continental Ins. Co. v. Continental Fire Ass'n*, 96 *Fed.* 846, and 101 *Fed.* 255, an injunction was refused and the decree affirmed on the ground that the word "Continental" was a generic term, the right to use which could not be exclusively appropriated by any individual or corporation.

The use of any particular name by a corporation will not be enjoined unless it is made to appear from the evidence and by all the circumstances that the proposed

use of the name will likely result in injury to the complainant corporation. *Drummond Tobacco Co. v. Randle* (1885), 114 Ill. 412.

The *London and Provincial Law Assurance Society v. The London and Provincial Joint-Stock Life Assurance Company* 17 L. J. Eq. (N. S.) 37 (A. D. 1847). This is an important case. Three words out of nine in defendant's name, and three out of seven in plaintiff's name, were in dispute. Plaintiff sought an injunction to restrain the use of these three words. The court refused it, leaving plaintiff to his action for damages.

The *London Assurance v. The London & Westminster Assurance Corporation, Limited*, 32 L. J. Eq. (N. S.) 664 (A. D. 1863). The application for injunction was denied.

The *Colonial Life Assurance Company v. The Home and Colonial Assurance Company, Limited*, 33 *Beav.* (A. D. 1864) p. 548. Here, too, injunction was refused.

The *Merchant Banking Co. of London, Limited, v. The Merchants' Joint Stock Bank, Limited*, 9 *Ch. Div.* (1878) pp. 566, 567. This is an important case. It holds that no fraud in fact existed and that there was shown no appropriation of the plaintiff's business, and injunction was refused. Sir George Jessel gave the opinion and based it on the three cases of *London & Provincial Law Assurance Society v. London & Provincial Joint Stock Life Assurance Co.*, 17 L. J. (Ch.) 37; *London Assurance Co. v. London & Westminster Assurance Co., Limited*, 32 L. J. (Ch.) 664; *Colonial Life Assurance Co. v. Home & Colonial Assurance Co., Limited*, 33 *Beav.* 548.

In *International Trust Company v. International Loan and Trust Company*, 153 *Mass.* 277 (A. D. 1891), it appears that the plaintiff was a Massachusetts corporation and the defendant a Missouri corporation. Both did a banking business in Boston. An injunction was refused, as it clearly appeared that defendant, in letters,

advertisements, circulars and signs, stated its name as "International Loan and Trust Company of Kansas City, Missouri." The Court said: "We do not think that a name, or title, or description, consisting of the words 'International Loan and Trust Company of Kansas City,' or of the same words with the contraction 'Mo.' added, can be said to be the same as, or so nearly identical with, 'International Trust Company' as to mislead. Two out of the four witnesses called by the plaintiff, being the only ones whose attention was directed to the matter, admitted that the addition of the words 'Kansas City' would remove any ambiguity or trouble. It is not sufficient that some person might possibly be misled, but the similarity must be such that any person, with such reasonable care and observation as the public generally are capable of using and may be expected to exercise, would mistake the one for the other."

¶ The complainant, under section 8 of the Corporation Act, is not entitled to enjoin the use of the word "Eureka" in defendant's corporate name so long as it manufactures, sells or continues to manufacture or sell conductive hose.

If the Court shall not have found defendant guilty of unfair competition, no relief should be had on this ground. To be entitled to relief on this ground it was necessary for complainant to have shown that an uncertainty existed, and that confusion was caused by reason of defendant's corporate name. As uncertainty or confusion have not been proven by complainant, and that it is not likely to occur in the future, the Court will not restrain the defendant from using "Eureka" in its corporate name on the ground of the statute.

POINT VII.

As complainant only used the word "Eureka" in connection with the sale and marketing of some of its brands of linen and cotton rubber lined hose, it is not entitled to an injunction covering rubber hose of any description.

The words conductive hose, used in the decree, while they have no meaning in the trade, yet to a layman it would include hose that would conduct anything.

While it does appear in evidence that defendant was making and selling steam hose, air hose, water hose and oil hose (testimony, p. 265), yet it appears that complainant was only making or selling cotton rubber lined and linen fire, mill and garden hose, and rubber fire hose, which is a water hose.

The evidence in this case is to the effect that complainant was a manufacturer of various grades of linen and cotton jackets for fire, garden and mill hose, and that they were liners of cotton jackets, producing the finished product of cotton rubber-lined hose. They did not make a piece of rubber hose and had no facilities for making it or the rubber tubes with which their cotton jackets were lined. There were, it seems, two kinds of rubber hose put on the market by complainant, namely, a fire hose and a suction hose. All rubber hose and rubber tubings were made for complainant by Voorhees Rubber Manufacturing Company, who sold exactly the same rubber hose to their own trade.

It appears that complainant's rubber hose was never designated by complainant as "Eureka" hose, and complainant was not known to the trade as a dealer in rubber hose or rubber goods.

Rubber hose is of entirely different construction and appearance from the cotton rubber-lined or linen hose. Rubber hose comprises a class of goods by itself and is so known to the trade.

Rubber hose is made for various uses, namely, for conducting water, steam, air and oil (testimony, p. 265).

The complainant never put any rubber hose on the market except the water hose, *i. e.*, the fire hose and suction hose.

Even on the theory of the *Rogers Case*, the complainant, in no event, is entitled to an injunction covering hose of every discription. The injunction in the Rogers case was limited to silver-plated table-ware; it did not cover all silver-plated ware whether for table use or no, nor did it include all table-ware whether silver-plated or not.

The decree of the Vice-Chancellor should, in any event, be limited to the hose that complainant was putting on the market under the name "Eureka" at the time of defendant's incorporation.

But we submit the evidence shows that at the time of defendant's incorporation the complainant was not putting out any kind of rubber hose under the name "Eureka," and the Court, at this time, should limit the decree to cotton, rubber-lined and linen hose, if the decree is to be sustained at all.

If the Court, however, shall conclude that the stamping of complainant's corporate name on the rubber water hose is entitled to protection, protection can only be given on the ground of unfair competition by defendant.

Yet no fraud has been shown, nor has there been a single instance of any confusion over the rubber hose. There could be no confusion, for we have seen that the defendant marks its rubber hose entirely different from complainant.

Defendant's mark is within a *rectangle*, while complainant's mark is within an *ellipse*.

Defendant's brand is tri-colored, while complainant retains the natural color of the rubber. Defendant's lettering is different from complainant's. In fact, there is no resemblance between the two.

Therefore, in view of the cases already cited, that complainant's rights, if any, must be limited to the cotton, rubber-lined and linen hose.

CONCLUSION.

It is submitted, upon the whole case, that the decree appealed from is erroneous in adjudging that the defendant be enjoined from directly or indirectly using the word "Eureka" as part of its corporate title, or in any form or combination on or in connection with the advertisement or sale of conductive hose, and from using the word "Eureka" in its corporate title or otherwise, so long as the defendant manufactures or sells, or continues to manufacture or sell, conductive hose, and that an injunction do issue accordingly, and that the application of the complainant for a general decree enjoining altogether the use by the defendant of its corporate title be denied but without prejudice to the filing of a bill hereafter to enjoin such use, under the conditions in that behalf expressed in the decree; that, on the contrary, the decree should be reversed, and the complainants' bill dismissed with costs.

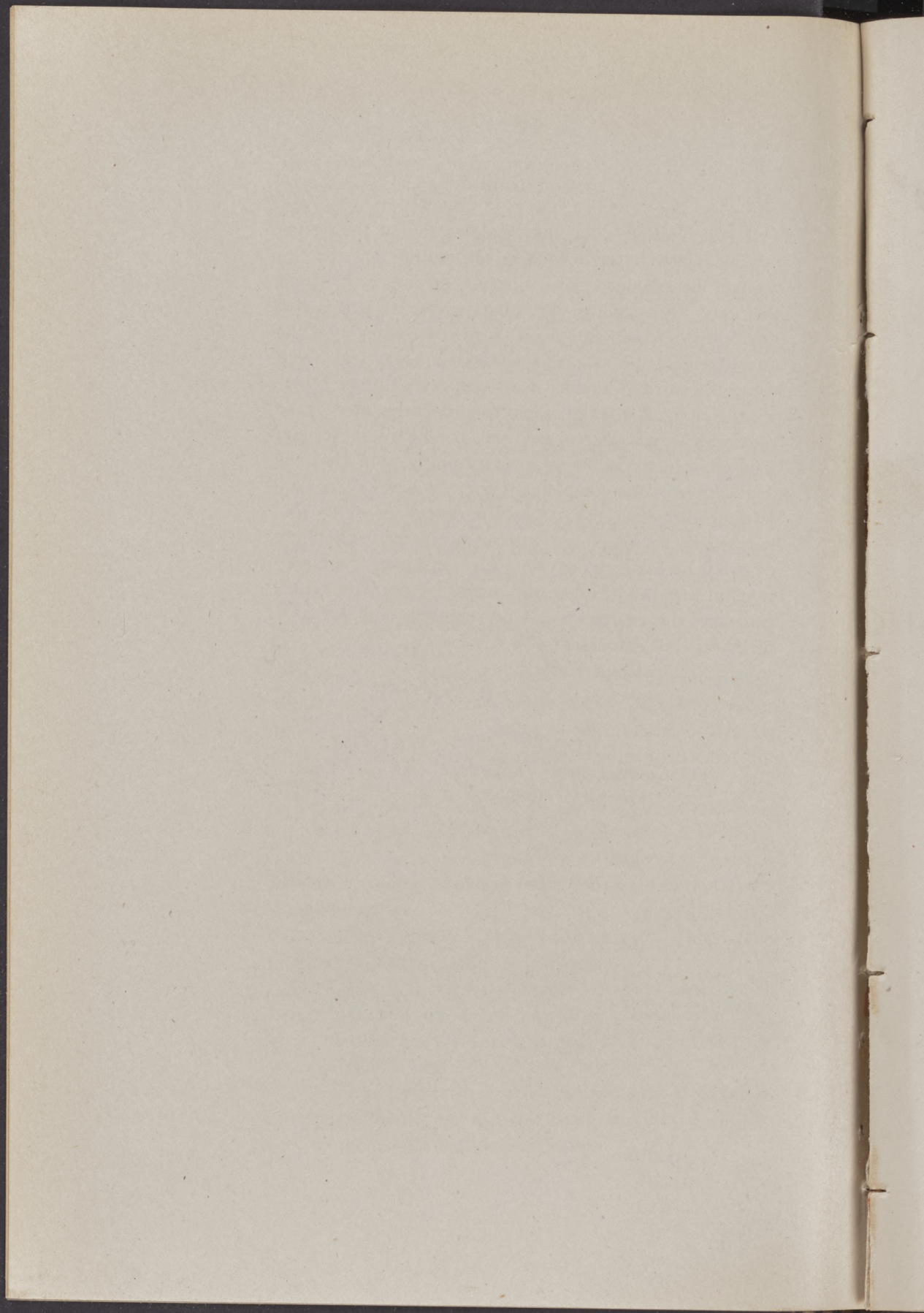
Respectfully,

JOHN V. B. WICOFF,

Solicitor, and

EDWIN ROBT. WALKER,

Of Counsel with Defendant and Appellant.



New Jersey Court of Errors and Appeals.

Between

EUREKA FIRE HOSE COMPANY,
Complainant-Respondent,
and

THE EUREKA RUBBER MANUFACTURING COMPANY,
Defendant-Appellant.

*On Appeal from
Final Decree in
Chancery, ad-
vised by Vice-
Chancellor Em-
ery, June 6, 1905.*

BRIEF FOR COMPLAINANT-RESPONDENT.

The opinion of Vice-Chancellor Emery sufficiently states the case.

We submit:

I.

THAT COMPLAINANT HAS SHOWN AN EXCLUSIVE RIGHT TO THE USE OF THE WORD OR NAME "EUREKA" AS APPLIED TO CONDUCTIVE HOSE.

(a) It has registered the same as a trade mark. See Exhibits C 5, C 6, C 7, C 8, C 9, C 10, C 11, C 12, and C 13 (case p. 23, l. 26).

That the word "Eureka" is capable of being appropriated as a trade mark was decided in *Ford v. Foster*, L. R. 7, Chan. Div. 611.

(b) The complainant has for a long time used the name "Eureka" to designate its products and they are universally known in the market by that name.

See the testimony of the following witnesses :

Stowe, p. 27, l. 3;
 Knowles, p. 109, l. 21;
 Perley, p. 120, l. 16;
 Brennan, p. 133, l. 34;
 Voorhees, p. 138, l. 3;
 Boyd, p. 170, l. 14;
 Kingsland, p. 188, l. 23;
 Howard, p. 191, l. 15;
 Gardner, p. 195, l. 16;
 Wies, p. 210, l. 8.

See also Exhibits Nos. 41 to 48, being a collection of samples of advertising matter sent out by the complainant and its predecessors between 1875 and the filing of the Bill of Complaint (case pp. 27-41).

Complainant's products have become widely and favorably known throughout America, the West Indies, South Africa and Australia under the name "Eureka." The learned Vice-Chancellor correctly says that the complainant's goods, especially the "Eureka Fire Hose" has had a more extensive sale and has acquired a higher reputation than those of any other manufacturer (case p. 293).

Candee, a rubber manufacturer of Toronto, Canada, says of the word Eureka: "It is the most valuable name, in my opinion, in cotton hose, that there is in the world." (Case p. 60, l. 38.)

Arnold, a dealer in rubber goods, from Chicago, says that he thinks "Eureka hose is known more widely than any other hose made." (Case p. 78, l. 38.)

Knowles, a dealer in rubber and fire hose of all descriptions, at Boston, says that complainant's product is widely and favorably known all over the country and that competitors simply represent their goods

as equal to the "Eureka." (Case pp. 110 and 111.)

Voorhees, a rubber manufacturer, from Jersey City, says that complainant's product is the largest of the kind in the world and that the reputation of its goods is the very highest. (Case p. 137, l. 30.)

Brennan, Fire Marshal of Penn. R. R. at Jersey City, says that "My experience of hose is that the Eureka fire hose is the best fire hose manufactured." (Case p. 124.)

Bates, for many years Chief of the New York Fire Department, says: "The Eureka hose is the best of any hose we have ever used." (Case p. 124, l. 3.)

Perley, who had served as Engineer, Chief Engineer, and Fire Commissioner in New York for a great many years, testified that they had not been able to find anything yet better than "Eureka" hose. (Case p. 120, l. 10.)

Boyd, a dealer in hose, from Haverford, Pennsylvania, says that Eureka goods command a higher price than any other goods on the market and that the sales are very much larger than of any similar brand. (Case p. 169, l. 36.) He was asked "How do you explain that?" and answered, "Well, principally on account of the reputation which the 'Eureka' goods have all over the country; they are known and there is a demand for them; there are a number of railroads that have adopted them as standards and won't buy anything else, because they have been tested; they have proved by service to be more durable and stronger and better in every way." (Case p. 170, l. 6.)

Howard, a dealer in fire hose from Brooklyn, says that the best grades of the "Eureka" sell at a better price than the best grades of any similar hose. (Case p. 192, l. 10.)

Gardner, a rubber dealer in New York, says that the name "Eureka" branded upon goods is of value in the sale of the goods "simply because the company, the Eureka Company, have always delivered first-class goods, and they have got an exceptionally good reputation on their various brands of goods, and consequently a man looking at the word "Eureka" on the goods would naturally think that the goods were of a high standard." (Case p. 197, l. 2.)

Kingsland, an exporter of hose, says that complainant's hose stands first in Australia and South Africa and that it is known there simply as "Eureka hose." (Case p. 187.)

It is not pretended that up to the time of the organization of the defendant company in 1902, the word "Eureka" was used in connection with the manufacture or sale of hose by any manufacturer or dealer other than the complainant and its predecessors.

Under these circumstances, we submit that the right of the complainant to the exclusive use of this name or trade mark is clear.

II.

THE DEFENDANT HAS ATTEMPTED TO APPROPRIATE TO ITSELF THE NAME "EUREKA" AS USED IN CONNECTION WITH THE MANUFACTURE AND SALE OF CONDUCTIVE HOSE, AND THIS FOR THE PURPOSE OF DECEIVING THE PUBLIC AND STEALING THE COMPLAINANT'S TRADE.

The defendant company was organized by men thoroughly acquainted with the rubber business and who knew the value of the complainant's trade mark. Among them were Edmond E. Cook, who had been a rubber manufacturer in Trenton for upwards of ten years, and his brother, George R. Cook, who had been

associated with him in the business for the same length of time. (Case p. 256, l. 16.)

The promoter of the company was one John A. Lambert, who immediately became its secretary and general manager. Lambert had been in the rubber business from 1885 and was acquainted with all the rubber goods on the market. (Case p. 262.) Lambert, before the organization of the defendant company, was the western manager of the Empire Rubber Manufacturing Company of Trenton, with an office at Chicago. While acting in that capacity he helped organize the "Empire Rubber Manufacturing Company of Illinois." (Case p. 280.) This company came to grief but on what account the court did not permit us to show. (Case p. 281, l. 38.) Lambert then came to New Jersey and, as stated, promoted the organization of the defendant company. It is significant that before adopting the defendant's corporate name he caused inquiry to be made at the office of the Secretary of State to ascertain whether or not it would infringe upon any other name in use in this state. (Case p. 255, l. 32.) As there was no other name except that of the complainant upon which it could possibly infringe, and as Lambert was thoroughly acquainted with the rubber business, this inquiry was most significant. And equally significant is the fact that in formulating the defendant's certificate of incorporation the draftsman evidently had the complainant's certificate before him. See parallel phrases set out in the Vice Chancellor's opinion. (Case p. 302, bottom.)

One of Lambert's first acts as manager was to issue a preliminary catalogue, a copy of which will be found attached to page 320 of the state of case. On this, it will be observed, is printed the same tri-color which was then in use by the complainant.

On the third page is a statement that this tri-color will be used to indicate defendant's products. There is also on this same page in capital letters the words "How to tell Eureka goods," and the word "Eureka" is printed in very large type. Shortly thereafter Lambert prepared and has ever since used a letter head, a copy of which is attached to the case at page 322. For the purpose of showing its similarity to complainant's letter head, a copy of the latter is attached to the succeeding page. It will be noted that a tri-color also appears on defendant's letter head. Lambert also prepared and has since used a business card, which is attached to page 319 of the state of case. The similarity between this card and the complainant's letter head will be noted. To page 321 of the case is attached one of defendant's envelopes exhibiting the tri-color.

Significant also of the defendant's purpose to appropriate the word "Eureka" and connect their products in the public mind with those of the complainant by the use of that word, is the sign they used at their New York office, photographs of which are in evidence and will be produced before the court.

See also defendant's advertisement in the India Rubber World, marked Exb. C 52, which also will be produced on the argument.

The learned Vice Chancellor was correct, we submit, in summing up the evidence on this branch of the case as follows:

"Lambert's admitted familiarity with the trade and with the complainant's reputation for the goods put on the market originally, at least, as "Eureka" goods. His subsequent conduct, as manager of the defendant, in the use of this word "Eureka" in the catalogue, letter heads, and advertisements, in putting on the mar-

ket goods manufactured in competition with complainant; the persistence in using the name after notice that confusion had already occurred, taken in connection with the failure to give any explanation or statement of the reasons for selecting the name, warrant the conclusion that the defendant's adoption and use of the word "Eureka" as part of its corporate title, and otherwise, was, in fact, for the purpose of availing itself to some extent of the trade reputation complainant had given to goods marketed under that name, an actual fraudulent intent is proved." (Case p. 304, l. 36.)

That the devices of the defendant were calculated to create confusion in the minds of the public and to lead purchasers to suppose that the products of the defendant were in fact those of the complaint, is shown by the confusion and deception which actually resulted.

See

(a) Correspondence between George P. Thomas and James Boyd and Brother. Exhibits C 34-37. (Case p. 171-173.)

(b) Testimony as to bid of Eureka Manufacturing Company to the Town of Kearney. (Case p. 146, l. 10, Exhibit 33, p. 318.)

(c) Letter and quotation of prices to Hugh Matthews, Clerk, Illion, N. Y. (Case p. 111, l. 34, Exhibit C 31, p. 317.)

(d) Testimony of Wiess as to the following facts:

1. That for many years before defendant's incorporation complainant had been extensively addressed by its customers as "Eureka," "Eureka Company," "Eureka Hose Company," "Eureka Rubber Company," &c., and was in fact "known in the trade almost entirely as the 'Eureka Company.'" (Case p. 157, l. 4.)

2. That after defendant's organization much confusion arose in the trade in the use of the name "Eureka," orders coming to complainant that were intended for the defendant and *vice versa*. (Case p. 216.)

(e) Testimony of Boyd as to inquiries at complainant's agencies for goods advertised by defendant supposed to be complainant's products. (Case p. 170, l. 38.)

Testimony of Wiess as to confusion arising at Brownwood, Texas, over the bids of complainant and defendant for supplying municipal hose. (Case p. 217, l. 20.)

Also as to difficulty complainant had with the Italian Royal Steamship Company because goods purchased from defendant had proved unsatisfactory, and were supposed to have been purchased from complainant. (Case p. 218, l. 4.)

The impression likely to be created upon the public mind by the use of the word "Eureka" by defendant company, is well shown by the witness Candee, who, on cross examination, testified as follows:

Q "If a piece of hose were submitted to you stamped with the words 'Eureka Rubber Manufacturing Company, of Trenton, New Jersey,' would you understand that hose to have been made by the Eureka Fire Hose Company of Jersey City?

A I am somewhat familiar with the goods, and I might look at it first to see if it was; I would know the goods, perhaps, but one who is not so familiar would not.

Q I am speaking of you?

A If it had the brand 'Eureka' on, I would naturally say it was from the Eureka Company.

Q If you saw the words 'Eureka Rubber Manufacturing Company of Trenton, New Jersey,'

would you infer that that was the product of the Eureka Fire Hose Company of Jersey?

A As I have never heard of any other company making fire hose but the Eureka Fire Hose Company, I would think it was one of their products." (Case p. 75, l. 26.)

III.

COMPLAINANT IS ENTITLED TO ENJOIN DEFENDANT FROM USING THE WORD "EUREKA" AS PART OF ITS CORPORATE TITLE OR OTHERWISE IN ANY FORM ON ANY HOSE SOLD BY IT IN COMPETITION WITH COMPLAINANT.

That this is so, whatever may have been the motive of the defendant in adopting and using the word "Eureka," is thoroughly established.

And it is equally well established that the defendant acquires no immunity by using other words in connection with the word "Eureka" or in stamping upon its products the place of their manufacture. It is enough that the use of this word in any form upon defendant's products is calculated to deceive.

The cases upon this subject are collected by Vice Chancellor Stevens in his opinion in *International Silver Company v. Rogers Corporation*, 21 Dick., 119.

See especially *Newman v. Alvord*, 51 N. Y. 189, where the defendant was restrained from labeling its cement products as "Alvord's Onondaga Akron Cement or Water Lime, manufactured at Syracuse, N. Y.," in view of the fact that complainant had long been manufacturing a cement at Akron, Erie County, which was known in the market as "Akron Cement" and was sold under the label "Newman's Akron Cement Company, manufactured at Akron, N. Y., the Hydraulic Cement known as the Akron Water Lime."

Also *Ford v. Foster*, L. R. 7 Chan. App. 611, where the defendant was restrained from labeling shirts

manufactured by it as "Foster, Porter & Company's Improved Eureka," upon proof that complainant had been for a long time making and selling a shirt known as "The Eureka," which was labeled "R. Ford's Eureka Shirt, London," and which was advertised by complainant as "Ford's Eureka Shirts."

Also *Wyckoff v. Howe Scale Company*, 110 Fed. 520, where defendant was restrained from advertising and selling typewriters under the name of "Remington-Sholes" in view of the fact that complainant had already established a trade in the manufacture and sale of typewriters under the name "Remington."

IV.

COMPLAINANT IS ALSO ENTITLED TO RESTRAIN THE DEFENDANT FROM THE USE OF THE WORD "EUREKA" AS A PART OF ITS CORPORATE TITLE, SO LONG AS IT CONTINUES TO MANUFACTURE OR SELL CONDUCTIVE HOSE.

As the learned Vice Chancellor well remarks: "So long as it (defendant) puts on the market goods in competition with complainant, the use of the word in its name or otherwise in connection with these goods, seems, under the evidence in the case, necessarily calculated to mislead the public, and to give the defendant some advantage of complainant's trade reputation. I cannot see how complainant can be sure to receive the full benefit of the trade name to which it is entitled, except by enjoining defendant's use of the name in its title or otherwise, so long as it continues the manufacture or sale of the goods sold in competition with complainant."

That under such circumstances the injunction should go, not merely against the use of labels or advertisements, but against the use of a corporate name in any connection or for any purpose so long as its use is calculated to deceive, is settled in this state by

the decision of this court in *International Silver Company v. Rogers Corporation*, 67 Equity 646.

To the same effect is *Celluloid Manufacturing Company v. Cellonite Manufacturing Company*, 32 Fed. 94, where Justice Bradley restrained the defendant company from using the corporate name "Cellonite Manufacturing Company" because of the similarity of the word "cellonite" to the word "celluloid" used by complainant as a trade mark and as a part of its corporate title.

Also *Garrett v. T. H. Garrett & Company*, 78 Fed. 472, where the Circuit Court of Appeals for the Sixth Circuit enjoined the defendant from using the name "T. H. Garrett" or "T. H. Garrett & Company," because it was engaged in manufacturing and selling snuff, and the complainant had long been manufacturing and selling a similar article under the name of "Garrett's Snuff."

In this case, as in the Rogers case, the proper name of one of the defendant's was employed in making up the corporate title, but in this case as in the Rogers case it was held that that circumstance did not entitle the defendant to immunity because its purpose was to deceive.

In *Block v. Standard Distilling & Distributing Company*, 95 Fed. 978, the defendant was enjoined from the use of its corporate name as above, because of its similarity to complainant's corporate name, which was "Standard Distilling Company."

In *Fuller v. Hoff*, 104 Fed. 141, defendant was enjoined from using the corporate name "Sanitarium Health Food Company," because of its similarity to

the name "Health Food Company," by which complainant was known.

We respectfully submit that the decree appealed from should be affirmed with costs.

RANDOLPH PERKINS,
R. V. LINDABURY.

INDEX.

	Page.
Bill of Complaint,	1
Amendment to Bill of Complaint,	9
Answer,	11
Amendment to Answer,	17
Replication,	18

Complainant's Witnesses.

Benjamin L. Stowe, direct,	19, 41, 82, 198
cross,	31, 83, 201
re-direct,	34, 107, 201
re-cross,	111
George A. Wies, direct,	36, 154, 202
cross,	39, 233
re-direct,	251, 254
re-cross,	252
Marcellus Bailey, direct,	46
Charles N. Candee, direct,	49
cross,	62
re-direct,	76
Daniel O. Arnold, direct,	77
cross,	80
Winfield S. Knowles, direct,	108
cross,	111
Hugh P. Matthews, direct,	111
cross,	113
Benjamin R. Western, direct,	114
cross,	117
Joseph L. Perley, direct,	117
cross,	120
re-direct,	122
re-cross,	122
Eli Bates, direct,	122
cross,	126
re-direct,	129
re-cross,	130
John Brennan, direct,	130
cross,	134
re-direct,	135
John J. Voorhees, direct,	135
cross,	140
re-direct,	145
George M. Eckert, direct,	146
cross,	149
re-direct,	152, 154
re-cross,	154

	Page.
James Boyd, direct,	167
cross,	175
re-direct,	179, 184
re-cross,	179, 184
William J. Kingsland, direct,	185
cross,	189
Lyman H. Howard, direct,	189
cross,	192
George A. Gardner, direct,	194

Defendant's Witnesses.

Richard C. Chamberlain, direct,	254
cross,	256
Charles A. Comp, direct,	257
cross,	261
John A. Lambert, direct,	262
cross,	279
re-direct,	286
re-cross,	287
Opinion of Vice-Chancellor Emery,	289
Final Decree,	307
Petition of Appeal,	309
Answer to Petition of Appeal,	311

Exhibits Offered by Complainants.

	Printed Page Case.	Introduced Page.
<i>Exhibit C 1</i> —Certificate of Incorporation of Eureka Fire Hose Company in New York, dated May 15, 1875,...	19
<i>Exhibit C 2</i> —Certificate of Incorporation of Eureka Fire Hose Company in New Jersey, dated Dec. 28, 1899,	19
<i>Exhibit C 3</i> —Bill of Sale from Eureka Fire Hose Com- pany of New York to Complainants, dated Dec. 30, 1899,	23
<i>Exhibit C 4</i> —Assignment of Trade Marks from Eureka Fire Hose Company of New York to Complainants,	23
<i>Exhibit C 5</i> —Certificate No. 5593 of Registration of Trade Mark "Eureka" for Hydraulic Hose, by Eureka Fire Hose Company of New York,.....	23
<i>Exhibit C 6</i> —Certificate No. 17107 of Registration of Trade Mark "Eureka Underwriters" for Linen Hydraulic Hose, by Eureka Fire Hose Company of New York,	23
<i>Exhibit C 7</i> —Certificate No. 17641 of Registration of Trade Mark for Hydraulic Hose (rubber lined, seamless, one ply, and cotton fabric), by Eureka Fire Hose Company of New York,.....	23
<i>Exhibit C 8</i> —Certificate No. 19167 of Registration of Trade Mark "Wove Knit" for Fire Hose made of Woven and Knitted Fabric, by Eureka Fire Hose Company of New York,	23

	Printed Page	Introduced Case.
<i>Exhibit C 9</i> —Certificate No. 23616 of Registration of Trade Mark "Eureka" for Hydraulic and Fire Hose, by Eureka Fire Hose Company of New York,.....	23
<i>Exhibit C 10</i> —Certificate No. 26345 of Registration of Trade Mark for Woven Fabric Hydraulic Hose, by Eureka Fire Hose Company of New York,.....	23
<i>Exhibit C 11</i> —Certificate No. 30606 of Registration of Trade Mark for Seamless Fabric Hydraulic Hose, by Eureka Fire Hose Company of New York,.....	24
<i>Exhibit C 12</i> —Assignment of Contracts, etc., from Eureka Fire Hose Company of New York to Complainants,	25
<i>Exhibit C 13</i> —Assignment of Book Accounts from Eureka Fire Hose Company of New York to Complainants,	25
<i>Exhibit C 14</i> —Certificate No. 35916 of Registration of Trade Mark for Fabric Hydraulic Hose, secured by Complainants,	26
<i>Exhibits No. 1 to No. 48 in red pencil</i> —Advertising Circulars issued by Eureka Fire Hose Company of New York and Complainants between 1875 and 1901,	41
<i>Exhibit C 16</i> —Certificate of Incorporation of "The Eureka Rubber Manufacturing Company," dated July 15, 1902,	46
<i>Exhibits C 17 to 21, inclusive</i> —Correspondence between Marcellus Bailey and H. H. Hamill,.....	312-316	48, 49, 130
<i>Exhibits C 22, C 25-C 28 A-F</i> —Advertising Circulars issued by the Gutta Percha and Rubber Manufacturing Company of Toronto, Limited,.....	{ 52, 59, 60, 76, 77
<i>Exhibit C 23</i> —Advertising Circulars issued by Toronto Rubber Company of Canada,	53
<i>Exhibit C 24</i> —Letter-head of Gutta Percha and Rubber Manufacturing Company of Toronto, Limited,.....	58
<i>Exhibit C 29</i> —Letter-head of Salesbury & Company,....	80
<i>Exhibit Samples 1-20</i> —Samples of Complainant's Hose,	83
<i>Exhibit C 30, C 31</i> —Letters from Defendant to H. B. Mathews,	317	112
<i>Exhibit Sample C 32</i> —Sample of Defendant's Hose,....	113
<i>Exhibit C 33</i> —Letter from Defendant to Town Clerk of Kearny,	318	153
<i>Exhibit C 34 to C 37</i> —Letters from George R. Thomas, Jr., to James Boyd & Brother,.....	171-173
<i>Exhibit C 38</i> —Catalogue issued by James Boyd & Brother,	179
<i>Exhibit C 38 Howard</i> —Business Card and Preliminary Catalogue of Defendant,	319, 320	190
<i>Exhibit C 40 Howard</i> —Samples of Hose of Defendant,...	190
<i>Exhibit Sample 21</i> —Coil of Hose of Complainant,.....	202
<i>Exhibit C 41</i> —Misdirected Letters and Telegrams, Without Envelopes, Received by Complainant in 1901,....	203
<i>Exhibit C 42</i> —Misdirected Letters and Telegrams, Without Envelopes, Received by Complainant in 1900,....	204
<i>Exhibit C 43</i> —Misdirected Letters and Telegrams, Without Envelopes, Received by Complainant in 1899,....	204

	Printed Page Case.	Introduced Page.
<i>Exhibit C 44</i> —Misdirected Letters and Telegrams, Without Envelopes, Received by Complainant in 1898, . . . . .	. . . . .	204
<i>Exhibit C 45</i> —Misdirected Letters and Telegrams, Without Envelopes, Received by Complainant in 1897, . . . . .	. . . . .	204
<i>Exhibit C 46</i> —Misdirected Letters and Telegrams, Without Envelopes, Received by Complainant in 1896, . . . . .	. . . . .	205
<i>Exhibit C 47 Weis</i> —Misdirected Letters and Telegrams, Without Envelopes, Received by Complainant in 1891, . . . . .	. . . . .	206
<i>Exhibit C 48 Weis</i> —Misdirected Letters and Telegrams, Without Envelopes, Received by Complainant in 1876, . . . . .	. . . . .	207
<i>Exhibit C 31 Weis</i> —Sample of Defendant's Hose, . . . . .	. . . . .	220
<i>Exhibit C 49</i> —Letter from Boston Belting Company to Complainant, . . . . .	. . . . .	221
<i>Exhibit C 50</i> —Preliminary Catalogue of Defendant,	320	224
<i>Exhibit C 51</i> —Business Envelope of Defendant,	321	225
<i>Exhibit C 52</i> —Advertisement of Defendant in "India Rubber World,"	324	225
<i>Exhibit C 53 to C 56</i> —Photographs of Sign at Defendant's New York Office, . . . . .	. . . . .	225-226
<i>Exhibit Circulars 48, 49</i> —Pamphlets issued by Complainant, . . . . .	. . . . .	227
<i>Exhibit C</i> —Letter-head of Defendant,	322	. . . . .
<i>Exhibit C 57</i> —Letter-head of Complainant,	323	231
<i>Exhibit C 58 and C 59</i> —Misdirected Letters and Telegrams Received by Complainant in 1903, . . . . .	. . . . .	232
<i>Exhibit Samples 30 to 63</i> —Samples of Defendant's Hose, . . . . .	. . . . .	232

Exhibits Offered by Defendant.

Certificates of Incorporation of Companies in New Jersey having "Eureka" in their Corporate Names, prior to Incorporation of Defendant, and Special Act of Legislature Incorporating Eureka Waste Cleaning Company,	257-261
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In Chancery of New Jersey.

Between

EUREKA FIRE HOSE COMPANY,
Complainant,

and

THE EUREKA RUBBER MANUFACTURING COMPANY,
Defendant.

} On Bill, &c.

BILL OF COMPLAINT.

(Filed April 22, 1903.)

To his Honor William J. Magie, Chancellor of the State **10**
of New Jersey:

Humbly complaining, shows unto your Honor your orator, Eureka Fire Hose Company, a body corporate of the State of New Jersey, that:

1. On the fifteenth day of May, in the year of our Lord, one thousand eight hundred and seventy-five, the Eureka Fire Hose Company was incorporated under the laws of the State of New York, and thence until the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, was engaged in the business of the manufacture and sale of fire hose composed of knit and woven fabrics combined with the substance, commercially called, rubber, derived from caoutchouc gum and in the manufacture and sale **20**

of other knit and woven fabrics of which rubber formed a component part. The name "Eureka," as applied to such fire hose and other fabrics, was largely advertised by said company, and became well known to the public as designating the goods manufactured by said company, which goods deservedly gained a high place in the public estimation, leading to a very large and profitable business by said company, in which the trade name "Eureka" was a very valuable asset.

10 2. On the twenty-fifth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, your orator was incorporated under the act of the Legislature of this State entitled "An act concerning corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof. The object for which such New Jersey corporation was formed was, among other things, to take over the business of the said New York corporation, and generally, to carry on the business of manufacturers of fire and
20 other hose, and knit and woven fabrics and woven goods and all goods of which rubber is a component part, and the various materials entering into the manufacture of any and all such goods, and to sell the same and place them upon the market. For a more particular statement, reference is had to the certificate of incorporation of your orator, filed in the office of the Secretary of State, a copy whereof is hereto annexed and made a part hereof and marked "Schedule A."

30 3. Your orator did take over the business of the said New York corporation, purchasing all its assets and good will, including the use of the name "Eureka," as applied to articles of the character manufactured and sold by said New York corporation, and ever since has conducted and carried on the business for which it was incorporated—having its factory and principal office in Jersey City. The volume of such business has been very large, and all the articles manufactured and sold by your orator have been extensively advertised as

"Eureka" goods and have been known in the trade and by the public by the trade name of "Eureka." Until the committing of the grievances hereinafter mentioned, such name, as applied to such articles, was in the exclusive use of your orator and its predecessor in title, and such name was of great value to your orator. By reason of the fact that rubber enters into the composition of the articles manufactured by your orator, many of its customers have, through inadvertence, fallen into the practice of inserting the word "Rubber" in their statement of your orator's name, in addressing to it letters and orders. 10

4. On the fifteenth day of July, in the year of our Lord one thousand nine hundred and two, a corporation was formed under said act of 1896, by the name of The Eureka Rubber Manufacturing Company, with its principal office in the township of Hamilton, in the county of Mercer, which company shortly thereafter engaged in the manufacture and sale of articles of the same general character as those manufactured and sold by your orator, and has largely advertised the same under the trade name of "Eureka," to which name your orator insists, by the long use of its predecessor and itself, it had theretofore become exclusively entitled. Said company has put upon the market fire hose and other fabrics stamped with the word "Eureka," and has in various ways made use of such word as designatory of other articles of manufacture in which it comes into competition with the business of your orator. 20 02

5. The two New Jersey companies have each an office in the city and State of New York, and much confusion has resulted from their both using the name "Eureka," with reference to the same lines of goods. Letters intended for your orator and sent by post, have, because of inaccuracy, owing to the very common practice of the correspondents of your orator of inserting the name "Rubber" in the address of their letters and orders, been delivered to the said The Eureka Rubber 30

Manufacturing Company, and have been opened by said company.

6. The use of the word "Eureka" by the said The Eureka Rubber Manufacturing Company in its corporate title and in advertising and marketing its goods is likely to deceive, and has, in fact, deceived the purchasing public into the belief that the goods of that company are the goods of your orator, and has led to purchases of such goods in many cases where, except
10 for such deception, the goods of your orator's manufac-
ture would have been bought instead. In consequence of the premises, your orator's trade has been, and is being, and will continue to be wrongfully and unlawfully diverted, and the goods of the said The Eureka Rubber Manufacturing Company have been, and are being sold as the goods of your orator, and upon the reputation acquired for the same by your orator, whereby your orator is and has been deprived of large sales of its own goods and of profits that would have been
20 thereby derived.

7. Your orator submits that the use of the word "Eureka," in connection with the advertisement and marketing of its goods by the said The Eureka Rubber Manufacturing Company, is in unfair competition with your orator, and that the assumption of the name "The Eureka Rubber Manufacturing Company," was in contravention of the eighth section of said act of 1896, or if not was, and the continued use thereof is in unfair competition with your orator.
30 8. Your orator has applied to the said The Eureka Rubber Manufacturing Company to cease to use the word "Eureka," in competition with your orator, but said company has refused so to do.

All of which matters and things tend to the manifest wrong and injury of your orator. Forasmuch as your orator has no adequate remedy at law, and can only be relieved by this Honorable Court: To the end, therefore, that the said The Eureka Rubber Manufacturing

Company may answer the premises and may be enjoined from the use of the word "Eureka" in advertising or marketing its wares or merchandise, particularly in the advertising and marketing of fire hose, and from using or exploiting the name "Eureka" in its title as a corporation or otherwise, and that your orator may have such further or other relief as the nature of the case may require, and as may be agreeable to equity.

And your orator as in duty bound, will ever pray, etc.

CROUSE & PERKINS, 10

Solicitors for and of Counsel with Complainant.

"SCHEDULE A."

(10c. Internal Revenue Stamp cancelled.)

This is to certify, that we, the undersigned, do hereby associate ourselves into a corporation under and by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, hereby claiming for ourselves all rights and privileges granted by the laws of the State of New Jersey upon corporations, and to that end we do by this our certificate set forth:

First. The name which we have assumed to designate such corporation and to be used in its business and dealings is the "Eureka Fire Hose Company."

Second. The location of the principal office of the company in this State is to be at No. 31 Wilkinson avenue, in the city of Jersey City, county of Hudson, and the name of the agent therein and in charge thereof upon whom process against this corporation may be served is Benjamin L. Stowe.

Third. The object for which the corporation is formed is to take over the present business of the

Eureka Fire Hose Company of New York, and generally to carry on the business of manufacturers of fire and other hose and knit and woven fabrics and woven goods and all goods of which rubber is a component part, and the various materials entering into the manufacture of any and all such goods, to sell the same and place them upon the market; to manufacture and deal in all articles and things used in the manufacture and working thereof, and also all apparatus, machinery and
10 materials of all kinds which shall be capable of being used in connection with the business of the company, and likely to be required by its customers in said business; to purchase, lease or otherwise acquire and hold lands and buildings for the establishment of manufactories and workshops with suitable plants, and such other buildings as may be required for the purposes of the company; to pledge and mortgage the same, and to issue bonds or other evidence of indebtedness secured by the same; to purchase and acquire Letters Patent
20 and Trademarks covering hose and knitted or woven fabrics and other rubber goods, and manufacturing apparatus and machinery therefor issued by the Government of the United States or any foreign government; to apply for and obtain letters patent and trademarks for any invention that may be deemed advisable in connection with the company's business; to sell such patents, patent rights, trade marks or processes acquired by the company, and to grant licenses to others to use the same; to purchase, receive, hold and own bonds or
30 other evidences of indebtedness, shares of stock of other corporations, and to contract with the Government of the United States or any State thereof or any municipal or individual corporation, association or community, and in general to purchase and hold any business or any property, real or personal, and any rights or privileges which the company may deem necessary or convenient for the purposes of its business, and in general to carry on any other business which may be carried on

in connection with the above, or calculated directly or indirectly to render profitable any or all of the company's properties or rights.

This corporation shall also have power to conduct its business in all its branches and to have one or more offices, and to hold, mortgage, lease and convey real and personal property outside of the State of New Jersey, and in all other States and in all foreign countries to which the business of the company may be hereafter extended.

The Board of Directors may, by resolution passed by a majority of the whole board, designate three or more of their number to constitute an executive committee, which committee shall, as provided in said resolution or in the by-laws of the said company, have and exercise the powers of the Board of Directors in the management of the business and affairs of the company and may have power to authorize the seal of the company to be affixed to all papers which may require it.

Fourth. The amount of the capital stock of the company is five hundred thousand (\$500,000) dollars divided into five thousand (5,000) shares of one hundred (\$100) dollars each. The amount of capital stock with which it shall commence business is fifteen hundred (\$1500) dollars.

Fifth. The names and post-office addresses of the incorporators and the number of shares subscribed for by each are as follows:

<i>Names.</i>	<i>P. O. Addresses.</i>	<i>No. of Shares.</i>	
George A. Wies,	Central Valley, Orange County, New York.	Five (5)	30
Benjamin L. Stowe,	49 Fulton Avenue, Jersey City. New Jersey.	Five (5)	
Isaac B. Markey,	120 Underhill Avenue, Brooklyn, New York.	Five (5)	

STATE OF NEW JERSEY.
DEPARTMENT OF STATE.

I, S. D. Dickinson, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of the Certificate of Incorporation of "Eureka Fire Hose Company," and the endorsements thereon, as the same is taken from and compared with the original filed in my office, on the twenty-eighth day of December, A. D. 1899, and now remaining on file therein. 10

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, this thirtieth day of December, A. D. 1902.

S. D. DICKINSON,
Secretary of State.

20

AMENDMENT TO BILL OF COMPLAINT.

(Filed December 24, 1903.)

The complainant hereby amends its bill of complaint as follows:

First. By inserting therein a new paragraph as follows:

"9. Prior to October fifteenth, eighteen hundred and eighty-nine, the said New York corporation adopted a distinctive device consisting of red, white and blue parallel lines woven in the fabric for the purpose of distinguishing certain kinds of hose manufactured and sold by it from hose of the same general appearance manufactured and sold by others, and said device as to those kinds of hose has continuously been used by said New York Corporation and by your orator until the present 30

time. Said device became known to the trade and to the public generally as indicating 'Eureka' goods of the particular kinds on which it was used, and became identified in the public mind with 'Eureka' hose, and the right to use such device in connection with the trade name 'Eureka' became and was and is a valuable asset of your orator.

"The said The Eureka Rubber Manufacturing Company, well knowing the premises, in advertising its
10 product, has simulated this device by the use of red, white and blue parallel lines in catalogues for advertising purposes, and has declared its purpose to use red, white and blue parallel lines in branding and putting up its goods, and has in fact so used such lines, thereby intending to mislead the trade and the public into the belief that such goods are manufactured by your orator. For the purpose of creating confusion in this regard and causing the public generally to believe said company to be identified with your orator, said company has
20 issued business cards and catalogues, and has used in its business envelopes and letter heads containing these red, white and blue parallel lines sometimes in connection with the word 'Eureka' and sometimes in connection only with its corporate title."

Second. By adding before the prayer for general relief the following:

"And from using in connection with its goods or advertising the same any device of red, white and blue parallel lines."

30

CROUSE & PERKINS,
Solicitors for Complainant.

ANSWER.

(Filed June 6, 1903.)

The answer of The Eureka Rubber Manufacturing Company, defendant, to the bill of complaint of Eureka Fire Hose Company, complainant.

This defendant, in answer to the bill of complaint of said complainant, or to so much thereof as this defend- 10
ant is advised it is material or necessary for it to make answer unto, answering, says :

1. This defendant has no knowledge or information, other than that conveyed to it in and by the complainant's bill of complaint, concerning the alleged incorporation of the Eureka Fire Hose Company under the laws of the State of New York, or concerning the nature of the business in which said complainant, by its bill of complaint, alleges said Eureka Fire Hose Company was engaged from the fifteenth day of May, in the year eight- 20
teen hundred and seventy-five, until the twenty-eighth day of December, in the year eighteen hundred and ninety-nine, and this defendant can, therefore, neither admit nor deny the allegations of the complaint in the first paragraph of its bill of complaint in these respects made, and this defendant leaves the complainant to make such proof thereof as it may be advised is necessary or proper.

2. This defendant has no knowledge or information, other than that conveyed to it in and by the complainant's 30
bill of complaint, concerning the alleged incorporation of the complainant company on the twenty-fifth day of December, in the year eighteen hundred and ninety-nine, under any law or laws of the State of New Jersey, or concerning the objects for which said complainant company is alleged to have been incorporated, and this defendant can therefore neither admit nor deny the allegations of the complainant in the second paragraph of its

bill of complaint in these respects made, and this defendant leaves the complainant to make such proof thereof as it may be advised is necessary or proper.

3. This defendant has no knowledge or information, other than that conveyed to it in and by the complainant's bill of complaint, as to whether the complainant company took over the business of the said New York corporation, or purchased the assets or good will of the said New York corporation, or as to the location of said
10 complainant's factory or principal office, and this defendant can therefore neither admit nor deny the allegation of the complainant in the third paragraph of its said bill of complaint in these respects made, and this defendant leaves the complainant to make such proof thereof as it may be advised is necessary or proper. This defendant denies that said complainant purchased from said New York corporation the use of the name "Eureka," as applied to any articles whatsoever, and charges that said
20 New York corporation has no title to said name which could be transferred by purchase or otherwise. This defendant further denies that the articles manufactured and sold by the complainant company have been known in the trade and by the public by the trade name of "Eureka," and charges that said complainant has not acquired the right to the exclusive use of such name, either by the volume of its business, or by any manner of advertising its business, or by any other means whatsoever. This defendant further says that it has no knowl-
30 edge or information, other than that conveyed to it in and by the complainant's bill of complaint, as to whether any of the customers of the complainant have, by inadvertence or otherwise, fallen into the practice of inserting the word "Rubber" in their statement of the complainant's name in addressing letters or orders to the complainant, and therefore this defendant can neither admit nor deny the allegations of the complainant in the third paragraph of its bill in this behalf made, and leaves the complainant to make such proof thereof as it may be

advised is necessary or proper; but this defendant charges that even if the allegation of such inadvertent insertion of the word "Rubber" in the corporate name of the complainant by any of its customers be true, such fact does not entitle, or aid in entitling, the complainant to any relief against this defendant in the use of the word "Eureka" in this defendant's corporate name.

4. This defendant admits that it was incorporated on the fifteenth day of July, in the year nineteen hundred and two, under the law in the fourth paragraph of the 10 complainant's bill referred to, by the name of "The Eureka Rubber Manufacturing Company," and says that in the certificate of its incorporation its objects are declared to be, and that its objects in fact are, amongst other things, "to manufacture and trade in caoutchouc, india rubber and other gums of like use, and articles of which any such gum is an essential ingredient; and to make, purchase and sell rubber articles and goods of every kind and description of which rubber, or other like gum, is a component part, and the various materials 20 entering into the manufacture of any and all such goods"; and this defendant says that prior to filing its said certificate of incorporation in the office of the Secretary of State due application was made on behalf of this defendant to the Secretary of State of New Jersey for information as to whether the name "The Eureka Rubber Manufacturing Company" had been assumed by any other corporation of this State, or whether any other name had been assumed by any other corporation of this State so nearly similar to the name "The Eureka Rubber 30 Manufacturing Company" as to lead to uncertainty or confusion, and that the information received by this defendant from said Secretary of State was that no such name had been assumed by any other corporation, and that no other name so nearly similar thereto as to lead to uncertainty or confusion had been so assumed, and that after receiving such information this defendant chose the name of "The Eureka Rubber Manufacturing Com-

pany," inserted the same in its certificate of incorporation, and filed such certificate in the office of said Secretary of State. And this defendant says that it is not true that the defendant has largely advertised goods under the trade name of "Eureka," or that the defendant has put upon the market fire hose and other articles stamped with the single word "Eureka" as a trade name, as alleged by the complainant in the fourth paragraph of its bill of complaint; but, on the contrary, this defendant
10 says that all uses of the word "Eureka" by the defendant have been in connection with the defendant's corporate name. This defendant further says that it is informed and believes that the complainant company is not known in the market or to the trade, and never has been known in the market or to the trade, as being engaged in, and in fact is not and never has been engaged in, any general line of the manufacture or sale of goods of which rubber is a component part, but that, on the contrary, its business now is, and always has been, limited to the manu-
20 facture and sale of cotton rubber-lined hose and a special kind of cotton belting in which rubber has never formed a component part, and that this defendant, ever since it commenced the manufacturing business, has been engaged in, and still is engaged in, and has been largely known in the market and to the trade, and still is largely known in the market and to the trade, as being engaged in the manufacture and sale, not only of cotton rubber-lined hose, but also rubber hose, rubber packing, rubber belting, rubber carriage drills and ducks, fruit-jar rings,
30 rubber mats and rubber matting, and a large number of other articles of which rubber forms a component part, and known in the market and to the trade as mechanical rubber goods.

5. This defendant admits that a corporation, firm or association of persons doing business under the name of "Eureka Fire Hose Company," and this defendant, have each an office in the city of New York, but this defendant denies that any confusion has resulted from

the use of the word "Eureka" by said defendant, or that on account of any such confusion any letters or orders intended for said complainant have been delivered to or opened by this defendant, as the complainant in and by the fifth paragraph of its bill of complaint has alleged.

6. This defendant denies the allegations of the complainant in the sixth paragraph of its bill of complaint made, to wit, that the use of the word "Eureka" by this defendant in its corporate title, or the use thereof in advertising and marketing its goods as this defendant has always hitherto used said word, deceives, or ever has deceived, any part of the purchasing public into the belief that the goods of this defendant are the goods of the complainant, or leads, or ever has led or threatens to lead, to the diversion from the complainant of any part of its business, or that this defendant has ever sold, or is now selling, any goods whatsoever as the goods of the complainant, or upon the reputation of the complainant's goods.

7. This defendant admits that the complainant has requested this defendant to discontinue the use of the word "Eureka" in the prosecution of this defendant's business, and that this defendant has declined to accede to said request, and this defendant says that it so declined, because it believes, and has believed, that the use of the word "Eureka" in this defendant's corporate title, and in its advertisements and upon its goods in the manner in which this defendant has hitherto always used said word, does not lead to any uncertainty or confusion intended to be provided against by the eighth section of our general corporations law, referred to in the seventh paragraph of the complainant's bill of complaint, and does not constitute unfair trade or competition. This defendant further says that the only kind of fire hose manufactured or put upon the market by the complainant, as the defendant is informed and believes, is what is known in the market as cotton rubber

lined fire hose, and that while this defendant manufactures and sells cotton rubber lined fire hose, as do a large number of other manufacturers, every piece of such fire hose manufactured or sold by this defendant is stamped only with a trade mark adopted by this defendant, to wit, "Admiral," or "Ensign," or "Commodore," or "Gunner." This defendant also says that in addition to cotton rubber lined fire hose this defendant manufactures and sells large quantities of fire hose
10 made of rubber and a material called duck, which in the market is known as rubber fire hose to distinguish it from what in the market is known as cotton rubber lined fire hose, and which this defendant puts upon the market stamped with its full corporate name, to wit, "The Eureka Rubber Manufacturing Company," and with the place of its manufacture, to wit, "Trenton, N. J.," and with a trade mark adopted by this defendant, to wit, "Acme," "Buffalo," "Capitol," "Durable," "Economy," "Favorite," or "Guaranty." This defendant fur-
20 ther says that it has never put upon the market any goods whatever stamped simply with the word "Eureka," but that such word, when used by this defendant on its letter heads and bill heads, and in its advertisements, and on its goods, has invariably been associated with the other words of its corporate name, and with the name of the place of its manufacture and one of the trade names adopted by this defendant and above mentioned.

All which matters and things this defendant is ready
30 and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

The Eureka Rubber Manufacturing Company, by
G. R. COOK,

[SEAL.]

President.

Attest:

J. H. LAMBERT,
Secretary.

STATE OF NEW JERSEY,
COUNTY OF MERCER,

The answer of the defendant, The Eureka Rubber Manufacturing Company, was taken this sixth day of June, in the year nineteen hundred and three, before me, under the common seal of the said corporation, as by its said seal thereto affixed, appears.

HENRY W. GREEN,
Master in Chancery of New Jersey.

10

AMENDMENT TO DEFENDANT'S ANSWER.

(Filed December 31, 1903.)

The defendant hereby amends its answer to the complainant's bill of complaint by adding thereto the following paragraph:

8. This defendant has no knowledge or information, 20
other than that conveyed to it in and by the complainant's bill of complaint, concerning the allegation contained in the ninth paragraph of said bill of complaint to the effect that the said New York corporation adopted a distinctive device consisting of a tri-color of red, white and blue, woven in the fabric in parallel lines, prior to the fifteenth day of October, in the year eighteen hundred and eighty-nine, or as to the time that said device has been in use by said New York corporation or by the complainant, or as to whether said device has at 30
any time been in use by said New York corporation or by complainant, or as to whether the same was in any-
wise at any time copyrighted or advertised by said New York corporation or by said complainant, and, therefore, this defendant can neither admit nor deny the allegations of the complainant in said ninth paragraph of its bill of complaint in these respects made, and this

defendant leaves the complainant to make such proof thereof as it may be advised is necessary or proper, but this defendant denies that it has at any time whatsoever in anywise simulated the said alleged device of the complainant, or has threatened to simulate the same, or has in anywise used any lines of the aforesaid colors in any such way as to mislead the trade or the public into the belief that the goods of this defendant are, or at any time have been, manufactured by the complainant,
10 or that this defendant has at any time in anywise issued any cards or catalogues, or used any envelopes or letter-heads, containing the said colored lines in any such way as to lead to any confusion, or as to cause the public generally or any persons whatsoever to believe this defendant company to be identified with the complainant, and this defendant further denies that it has in anywise used the said colors red, white and blue, either in parallel lines, or otherwise, in any such manner as to violate any of the rights heretofore acquired by said
20 complainant company.

W. M. LANNING,
Solicitor and of Counsel with Defendant.

REPLICATION.

(Filed June 26, 1903.)

30 The complainant joins issue on the answer of the defendant.

CROUSE & PERKINS,
Solicitors for Complainant.

TESTIMONY.

Transcript of shorthand notes of testimony and proceedings taken in the above entitled cause, before Hon. John R. Emery, V. C., at Chancery Chambers, Newark, N. J., on Monday, December 21st, 1903, at 10.30 A. M.

Appearances—Hon. Gilbert Collins, R. V. Lindabury, Esq., and Randolph Perkins, Esq., for complainant; **10**
Hon. William M. Lanning and John V. B. Wicoff, Esq., for defendant.

Judge Collins—I offer in evidence an exemplified copy of the certificate of incorporation in the State of New York, of the Eureka Fire Hose Company, incorporated May 18, 1875.

Marked *Exhibit C 1*.

Also certificate of incorporation in New Jersey, of the Eureka Fire Hose Company, dated December 28, 1899.

20

Marked *Exhibit C 2*.

Benjamin L. Stowe, sworn for complainant.

Direct examination, by Judge Collins:

Q. Where do you live? A. Jersey City.

Q. What is your age? A. My age is fifty-five.

Q. And your occupation?

A. I am the vice-president of the Eureka Fire Hose Company.

Q. Do you have to do with the practical operations **30**
and selling of the goods of that company?

A. I do; I am the manager of the factory.

Q. How long have you been manager of the factory?

A. Since the formation of the company originally,
in 1875.

Q. In New York? A. Yes; New York.

Q. And how long have you been vice-president?

A. Vice-president, I think, since 1892.

Q. You speak of the original organization; you refer to the Eureka Fire Hose Company that was incorporated by the certificate C 1, in evidence, in New York?

A. I do; yes.

Q. Who organized that company?

A. The incorporators were Colonel Richard Vose, John C. Wyman and Benjamin Guibert.

Q. And was the company organized in 1875?

A. Organized in 1875.

10 *Q.* And with you as general manager?

A. I was the manager of the factory.

Q. Where was that factory?

A. In New York City, Twenty-second street and Second avenue.

Q. What was their manufacture?

A. Manufactured chiefly hose for hydraulic and mechanical purposes.

Q. What was their chief article; their staple article?

A. Rubber lined cotton fire hose.

20 *Q.* Describe it?

A. It constitutes a rubber tubing which is made to retain water under pressure, and a fabric tubing which gives the strength and the wearing qualities to resist abrasion, wear; they are combined together.

Q. Cotton fabric?

A. Cotton fabric, usually combined by vulcanizing together. The rubber tubing is inserted sometimes by drawing through the fabric after weaving, and sometimes by weaving over it; they are then vulcanized together, steam is turned into it so that the tube is expanded out against the fabric, and the vulcanization of the tube is completed, and the tube and the fabric caused to be combined together by the heat—by vulcanization caused by the heat.

Q. What part of the manufacture did this company itself conduct? *A.* We manufactured the fabrics entire.

Judge Lanning—Do I understand you are asking about the New York Company?

Judge Collins—I am.

Judge Lanning—Objected to.

The Court—The taking over of the other company's business hasn't been proven, although it is alleged in the bill. I will admit it, subject to your objection.

Witness (Continuing)—The rubber tube is sometimes—we take the rubber tube and weave over it—the smaller sizes we always weave over a rubber tube that is partially vulcanized and coated with a vulcaniza- 10
ble cement. We put them into the loom, weave over it, and after it is weaved, we then turn live steam and put an attachment on each end and turn live steam into the rubber, expand it out against the rubber, and cause it to adhere by means of the vulcanization, so they are solidified and combined together. At other times we take the tube, and draw the tube over the fabric, after the fabric is woven; that is done in the larger sizes, and the same process of vulcanization is pursued.

Q. When you were interrupted by the objection of 20
Judge Lanning, you said that you made entirely the cotton fabric yourself?

A. We make entirely the cotton fabric.

Q. And is it always a cotton fabric?

A. Chiefly; we use in rubber lined hose, we use for covering hose, we use linen, and we weave some marlin over rubber, and sometimes linen, but usually cotton.

Q. The principal thing is the rubber lined cotton hose? A. Yes.

Q. You say you make the cotton fabric—speaking of 30
the ordinary fire hose—at present, you make the cotton fabric yourself and then do the vulcanizing yourself?

A. Yes.

Q. The rubber lining, that was made for you?

A. Yes.

Q. By rubber—

A. That is prepared to our order, made to our specification.

The Court—You mean the rubber tube?

Judge Collins—That was prepared by others for them to their specification.

Witness—But only partially vulcanized.

Q. So that the finishing of it, even as to the rubber itself, you did—your company did? *A.* Yes.

Q. Now, how large a trade did the Eureka Fire Hose Company, of New York, conduct—what volume of trade?

10 *A.* Well, I think we conducted the largest in our line of any concern in the world, I believe.

Q. Give us some idea of the volume of the trade.

A. In dollars?

Q. Yes.

The Court—The amount of product.

Q. Any way to give us an idea of the volume.

A. Of course, our business has increased from year to year, but I suppose for a number of years it has been above half a million dollars per annum.

20 *Q.* You say the largest in your line in the world; what do you mean by your line?

A. Our line is hydraulic hose.

Q. And how large a proportion of the entire output was this rubber-lined cotton hose, or cotton rubber-lined hose?

A. I am not certain; I should say two-thirds.

Q. Did you have any patents?

A. We have patents which are unexpired; our original patents have expired, of course.

30 *Q.* You continued your business in New York until 1899, when you were incorporated in New Jersey, as the certificate here states? *A.* Yes.

Q. When you were incorporated in New Jersey?

A. Yes.

Q. Your business had increased continuously up to that time? *A.* Yes.

Q. Did the same interests incorporate the new concern? *A.* Practically the same, yes.

Q. I show you bill of sale and various assignments from the Eureka Fire Hose Company, the New York corporation, to the New Jersey corporation? A. Yes.

Q. The bill of sale is executed by you as vice-president, and is that the company's seal? A. It is; yes, sir.

Bill of sale, dated December 30, 1899, is offered in evidence and marked *Exhibit C 3*.

Q. Had the New York corporation its factory in Wilkinson avenue, Jersey City? A. It had; yes, sir.

Q. Before the incorporation? A. Yes. 10

Q. I show you another one, dated December 30, 1899, called an assignment of trade-marks; that is your signature as vice-president, and the company's seal? A. Yes.

Q. Witnessed by Mr. Markey, who is the secretary, and who is present in court? A. Yes.

Offered in evidence and marked *Exhibit C 4*.

The document is recorded in Liber I 60, page 199 of Transfers of Patents, in the office of the Commissioner of Patents.

Judge Lanning—Objected to as irrelevant. 20

The Court—I will admit the assignment, subject to the objection, and hear you on the bearing of it.

Judge Lanning—My objection will extend to all these that are offered under the assignment.

Judge Collins—I offer in evidence trade-marks of the United States No. 5593, January 29, 1878.

(Marked *Exhibit C 5*.)

Also No. 17107, dated October 15, 1889.

(Marked *Exhibit C 6*.)

Also No. 17641, dated March 11, 1890. 30

(Marked *Exhibit C 7*.)

Also No. 19167, dated March 10, 1891.

(Marked *Exhibit C 8*.)

Also No. 23616, dated September 19, 1893.

(Marked *Exhibit C 9*.)

Also No. 26345, dated April 9, 1895.

(Marked *Exhibit C 10*.)

Also No. 30603, dated October 5, 1897.
(Marked *Exhibit C II.*)

Judge Lanning—I wish to interpose an objection to these exhibits relating to the trade-marks, as well as to the assignments, to which I did interpose an objection. I want now to say that there is absolutely nothing in the bill of complaint which in any wise charges the defendant with having violated any right of the complainant on
10 the ground that the complainant has used the word “Eureka” as a trade-mark.

The Court—That would be included under the objection for irrelevancy.

Q. I show you two Canadian trade-marks, bearing date August 11, 1890, to the Eureka Fire Hose Company, registering the name “Eureka,” one of them, and the other registering the name “Eureka Underwriters”?

A. That is linen hose.

Q. And those are two Canadian trade-marks of your
20 concern? *A.* Yes.

Q. You had and still have a trade in Canada, then?

A. We do a considerable trade in Canada, yes.

Judge Collins—I offer in evidence the two Canadian trade-marks, bearing date August 11, 1890.

Judge Lanning—Objected to as not properly exemplified.

Judge Collins—I will withhold these for the present.

30 Judge Lanning—I object to the “Eureka Underwriters”; that is irrelevant.

The Court—I think the objection is well taken, that the papers cannot be admitted as an evidence of a grant of trade mark in Canada, they not being exemplified.

Q. I show you another assignment, dated December 30, 1899, and your signature as vice-president? *A.* Yes.

Q. Of both companies; it is an agreement between the two companies; were you vice-president of both at that time?

A. I was vice-president of both.

Q. And Mr. Markey, the secretary, and Mr. Wies, who was the witness of the other company, are both here? A. Yes.

Judge Collins—I offer this in evidence.

Judge Lanning—Objected to as irrelevant.

The Court—Admitted subject to the objection. 10
Marked *Exhibit C 12*.

Q. This (indicating) is your signature as vice-president? A. Yes.

Q. And this is the seal (indicating), and Mr. Markey in court here, affixed it? A. Yes.

Judge Collins—I offer that in evidence.

Judge Lanning—Objected to for the same reason, as irrelevant.

The Court—It is admitted.

Marked *Exhibit C 13*. 20

Q. These documents comprise everything the old company owned and assigned over to you?

A. Intended to, yes, sir.

Q. You say you had erected your factory in New Jersey prior to the incorporation of the New Jersey company, so that the New York corporation was conducting its manufacture in New Jersey? A. Yes.

Q. Entirely? A. Entirely, in 1899.

Q. And with what result; what was the result of that upon its status in New Jersey; I mean, what financial 30 liability did that entail?

A. It entailed all the financial—

Q. I mean, what happened by reason of that fact, and why did you therefore incorporate in New Jersey?

A. Because our factory and chief investment was in New Jersey.

Q. And what about taxation?

A. Taxation was rather lessened.

Q. I mean did the fact that you had your works out of the State make the rate of taxation higher in the State?

The Court—I don't think that can make any difference.

Q. But it was because you were entirely over in New Jersey that you incorporated in New Jersey and made the transfer? A. Yes.

Q. Did you take out then another trade mark yourselves, this one that I hadn't put in evidence, dated February 19th, 1901? A. Yes.

Q. So you took that out? A. Yes.

Judge Collins—I offer in evidence trade mark No. 35916, dated February 19, 1901.

Judge Lanning—Objected to because it is irrelevant, and having no reference whatever to the word "Eureka" or any other words, as far as I can see.

20 The Court—I will admit it. The whole method of carrying on the business on both sides may be of some importance. I cannot tell yet that it will not be, so I will admit it subject to the objection.

Marked *Exhibit C 14*.

Q. How has your business progressed since this taking over of the New York business by the New Jersey corporation?

A. Well, it has increased gradually.

30 Q. When you gave a little while ago the volume of business, were you speaking of the present volume?

A. Well, it is rather in excess of that now.

Q. It was as much as that at the time of the transfer?

A. I think it was, yes, sir.

Q. You say the largest dealers in that kind of goods in the world; where else do you sell goods except in the United States and Canada?

A. Well, we export goods to various South American countries, to Cuba and to the Philippine Islands, to

South Africa, to Australia, and go pretty generally throughout the world.

Q. How are the goods known in the trade, to the public?

A. They are generally known as the Eureka goods.

Q. Did you issue circulars to the trade?

A. We have.

Q. You know of the circulars, but Mr. Wies, I suppose, knows more about them; what is his office?

A. He is treasurer of our company. 10

Q. The treasurer?

A. And general sales agent.

Q. And he can tell us more about the circulars than you? *A.* Yes.

Q. Have you got some samples of your goods here?

A. We have, yes.

Q. Now, I give you arranged chronologically a great number of the circulars that your company issued. Look them over and see if you can tell, of your own knowledge, that they were issued? 20

A. The first one I see is one signed by Junius Schenck, who became the general selling agent, dated October, 1875.

Q. Was Junius Schenck the selling agent at that time?

A. He was; he had just come with our company, and this was a notification to the trade that he had become connected with our company.

Q. You recognize it as a circular sent out to the trade by your company? *A.* I do, yes, sir.

Q. The date of it? *A.* October, 1875.

Q. He was the first selling agent? *A.* Yes, sir. 30

The Court—Let the witness now state whether these are all the circulars there are, and whether they are all the circulars issued by the company at the dates appearing on them, and mark them in red pencil, beginning with No. 1.

Q. Give the date of the second.

A. No. 2, March, 1876; No. 3, July, 1876; No. 4, February, 1877; No. 5, May, 1878; No. 6, July 10, 1879; No. 7, October, 1879; No. 8, November, 1880; No. 9, 1882; No. 10, without date; Mr. Reed died in 1892, and it must have been prior to 1892. No. 11, report sent out by us. That is a report of the trial of hose by the United States government.

Q. And you circulated that report?

A. Yes; the date of the report is December, 1876.

10 *Q.* Here is an accompanying report, circular that goes with it; this is dated December 11, 1876?

A. It was sent out just after this report was made. The United States Navy Report was made on December 11, 1876, and this was sent out by us very shortly after that, copy of official reports and orders of Eureka Fire Hose Company's hose.

Q. You sent it out shortly after the date therein referred to? *A.* Yes.

Judge Collins—That will be No. 12.

20 *Witness* (continuing)—No. 13, August 4, 1877; that is the date of the testimonial received from Chief Bates, of the New York Fire Department. This was issued shortly after by us.

Q. He sent a letter to you, and you then had it printed and sent out? *A.* Yes.

Q. What is that paper?

A. It is a printed copy of a testimonial letter that was sent us by the chief of the New York fire department.

Q. He is here in court?

30 *A.* I believe he is; he was to be here, at least.

Q. What did you do with that?

A. We printed a copy of it and circulated it to our trade.

Q. You printed more than one copy?

A. Yes; we printed copies and circulated it throughout the country.

No. 14 is dated May, 1877.

No. 15, I don't see that it is dated, but it was sent out by Mr. Schenck, and he died in 1892. It contains on the back of it a paper which is dated in 1878.

No. 16 is a copy of testimonial sent from Canada. They were sent in 1878 and this circular was issued by us shortly after the receipt of the circular; it is a testimonial, and printed copies were sent out to our trade.

No. 17 is dated April, 1879, and is a notice to the trade.

No. 18 is dated 1879 and is a trade price list. 10

No. 19 is a statement, 1879. It includes copy of a testimonial from the New York Fire Department, dated January 6, 1879, and sent out shortly after that time by us.

No. 20 is a pictorial circular; that was also sent out by Mr. Schenck, who died in 1892.

No. 21 is testimonial of Canadian Fire Departments; copy of testimonial received in 1880; it was sent out shortly after the receipt of the letters.

No. 22 is a price list, dated 1881, and sent out then; 20 it relates specially to linen hose.

No. 23 is another price list, dated also 1881. It relates especially to rubber-lined cotton hose.

No. 24 is a price list bearing date 1883. That relates especially to linen hose.

No. 25, price list, bearing date 1883, refers more especially to rubber-lined cotton hose, mill hose.

No. 26 is not dated, but it has a picture of the Brooklyn factory on it, and we moved from Brooklyn in 1892.

No. 27 is one with reference to Eureka belt and hose, 30 no date, but it was issued prior to 1892, because we moved from Brooklyn in 1892.

No. 28 is a notice to the trade for the season of 1882.

No. 29, headed "Important Tests of Hose"; it was prior to 1892, because it was issued while we were in Brooklyn.

No. 30, I don't see any date upon that, but it was issued prior to 1892.

No. 31 bears date October 1, 1890, and is a confidential circular issued to the trade.

No. 32, Eureka garden hose, circular season of 1890.

No. 33, circular relating to cotton and linen hose of every description, and has a price list annexed; it was issued by Mr. Schenck, and he died in 1892.

No. 34, catalogue and circular that was sent out by our Chicago agents, but it was issued by us. I don't find any date, but it was also issued during Mr. Schenck's life, and he died in 1892.

No. 35, I find no date on it, but there is an illustration on the back, which indicates that it was issued for use during the nineteenth century, and it refers in the body of it to a date in 1890. It was issued certainly I know prior to 1900, but the exact time of its issue I don't know; I know it was issued before 1900.

No. 36 refers to "Multiple" Eureka fabric fire hose. This is undated, but it was issued by Mr. Schenck, who died in 1892.

No. 37, headed "Important to Purchasers of Fire Hoses"; also undated, but issued by Mr. Schenck.

No. 38 refers to rubber-lined fire hose, "U. S. Brand," no date, but it refers to the trade mark of March 11, 1890.

No. 39, circular to purchasers of fire hose, no date, but signed by Mr. Schenck.

No. 40, circular to purchasers of fire hose, also no date, but issued by Mr. Schenck.

No. 41, headed "Eureka Fire Hose," which was issued in 1895.

No. 42 is a circular, an illustrated pamphlet. I can not locate its date, but it was issued since the Pan-American Exposition.

Q. (By Mr. Lindabury) Can you tell from your recollection, before what date it was issued?

A. Mr. Wies may be able to do that.

No. 43, larger size illustrated catalogue, also since the Pan-American Exposition.

No. 44, illustrated pamphlet, that is also since the Pan-American Exposition; Mr. Wies can tell the date.

No. 45 was issued in 1902.

No. 46 is a price list, date not given, but before 1900.

Q. (By Judge Collins) Although after that trade mark and before 1900? A. Yes.

No. 47 is headed "A Few Remarks." It bears no date, but it was issued prior to 1900. I can probably locate the date of that.

Q. Mr. Stowe, with the exception of those copies of reports of government officers and fire testimonials, &c., you identified, what were all the rest? 10

A. They were circulars issued in the way of trade, sent out circulars and pamphlets, sent out to our customers from our New York office.

Q. Circulars or price lists? A. Yes.

Q. And these others that you also sent out?

A. We sent out those; we had copies of testimonials received, and reports received, and we had copies printed and sent them out; they were sent out about the time they were issued. 20

Q. About the date of their issue? A. Yes.

Q. They all contain the name of the company in one way or another? A. Yes.

Judge Collins—The first is a circular of the Eureka Fire Hose Company of New York, of the chief engineer of the fire departments of the United States, and it describes the new steam fire engine hose as a seamless woven fabric, treble web, rubber-lined fire hose, and calls it "Eureka Fire Hose" in large type. 30

Judge Lanning—I would like to examine the witness as to these circulars.

Cross-examination, by Judge Lanning:

Q. Mr. Stowe, you are, I understood you to say, the vice-president of the complainant company? A. I am.

Q. And have been for how many years?

A. Since 1892.

Q. Before 1892 what office did you hold?

A. I have been superintendent and factory manager since the formation of the company; I was managing director, elected managing director in 1886.

Q. Have you ever been secretary?

A. I have never been secretary.

Q. Has it ever been your business personally to send out the mail of the complainant company?

10 *A.* Well, I have known of the sending out of such printed matter.

Q. Has it been your business to superintend the sending out of the mail?

A. It has been my business to have a knowledge of it.

Q. Have you personally had any knowledge of the mailing of these different circulars that are numbered here from 1 to 48?

A. I have known of their being mailed; yes.

20 *Q.* How?

A. By my general knowledge of the business.

Q. But you could not testify that circular No. 45, for example, had been mailed, or when, could you?

A. Yes; I could.

Q. What knowledge have you as to when circular No. 1 was mailed?

A. I know that it was sent out at the formation of our company, by Mr. Schenck.

Q. How do you know it?

30 *A.* By being in communication constantly with the people who were doing it, and general knowledge of the work that was being done.

Q. Did you see letters written and deposited in the post-office or in any box, or in any way in which they would naturally, and according to your business methods, reach the post-office? *A.* I knew that it was done.

Q. How did you know it?

A. I knew it from my general knowledge of the business.

Q. Were you told by the clerks who did it; is that the way you got your information?

A. I was told by Mr. Schenck, who sent out the circulars.

Q. Anybody else tell you?

A. I cannot recall at this time.

Q. Then the information that you have so derived, was solely from Mr. Schenck?

A. No; I cannot say that.

10

Q. Who else; from what source did you derive information as to the mailing of any of these circulars?

A. I knew that the circular was distributed; I knew of people who received it.

Q. How did you know that?

A. By general conversation with outside people.

Q. Did you get your knowledge of the distribution of these circulars in any other way than by conferring with the outside people?

A. Yes; I knew of it by information from the New York office.

Q. In other words, all the knowledge you have with reference to the distribution of these circulars, is what has been told you by Mr. Schenck, or some one else; that is true, isn't it?

A. I knew of it as a man connected with the business; prominently connected with the business and know what is being done.

Q. Isn't all the information that you have on the subject of mailing these circulars, information that you have derived, either from Mr. Schenck, or some other person who has told you about it? *A.* No.

30

Q. Let us have any other source of information you have, then?

A. I knew it from people who received these circulars.

Q. Because they talked with you about them?

A. Yes.

Q. That is the only way you know about that, isn't it? *A.* Well, I cannot state.

Re-direct, by Judge Collins:

Q. Have you seen them have the circular in their hands?

A. I cannot recall back to 1875 now, of course, for that matter.

10 *Q.* They were sent from the New York office, I understood you to say? *A.* Yes.

Q. Whereas, you were at the factory?

A. I was at the factory, although I was usually in the New York office.

Q. How frequently were you in the New York office?

A. Quite frequently; I cannot say how often.

Q. Did you gather any knowledge on your visits to the New York office of the actual sending out of circulars?

20 *A.* The officials from the New York office were at our factory frequently.

Q. You were at the New York office at times when circulars were being gotten out? *A.* Yes.

Q. Did you observe anything of the work being done there?

A. Yes; I saw the circulars being sent at that time.

Q. You saw them being mailed; what did you see of that character?

30 *A.* I saw the work of sending out circulars; I knew it was being done there.

Q. Were they all sent by mail?

A. Oh, no; they were given out to people who came into the store, given out by hand.

Q. Did you see that?

A. Yes; I saw that, and have given them out myself.

Q. How extensive were the various editions?

A. They were issued in a large number.

Q. What do you mean by large numbers?

A. Enough to be distributed pretty generally throughout the fire hose trade and mill hose trade in the country.

Q. About how extensive, about how large an edition was distributed?

A. At least several hundred.

Q. Who devised these circulars; who composed them?

A. Mr. Schenck.

Q. Did you take any part?

A. I consulted with him.

Q. As to their contents? *A.* Yes. 10

Q. Had your company agents?

A. We had agents throughout the country, yes.

Q. Where? *A.* Do you refer to 1875?

Q. All the time; we want to know how long these things were gotten out?

A. We have agents in various parts of the country; for instance, we have an agent in Philadelphia, Chicago, San Francisco and various large cities of the country we have agents; then we have some travelling salesmen.

Q. Now, what was done, if anything, with regard to 20 these different circulars as to these agencies?

A. They were supplied with them.

Judge Lanning—Objected to; sending them to their own agents is not a circulation.

The Court—I will admit it.

Q. You don't mean that was the only disposition of them?

A. No; the first circular was intended to be sent to every fire chief in the United States.

Q. Now, how were these circulars gotten out—the 30 various ways in which they were put out?

A. The most of them were sent out by mail directly to the firemen and to the jobbing houses and jobbing consumers of hose; also sent to our agents, supplied them for distribution, and we give them out from our New York office by hand to those applying for them—those people coming in; we also gave them out at our factory—the various editions.

Judge Collins—I will offer them in evidence.

The Court—Give all your evidence in regard to them.

Witness—I thought you referred particularly to that 1875 circular.

Q. The whole lot.

A. I have given them out by hand—I have given them out to the trade myself; I know them to be given out from the factory by mail, and known of their distribution in large numbers, but when it comes to a particular
10 circular in 1875, it is indefinite; I know them to have been given out.

Q. Now, tell us all about the whole line of circulars.

A. They have been sent out by mail direct to the consumers, to the trade generally; they are distributed by hand from the New York office and from the factory office; whenever anyone comes in and makes inquiry with regard to hose, we give them circulars and price lists, and that has been our custom from time to time.

20 Judge Collins—I will ask the witness to step aside a moment.

George A. Wies, sworn for complainant.

Direct examination by Judge Collins:

Q. What is your present relation to the complainant?

A. Treasurer of the company.

Q. How long have you been connected with the company, or its predecessor, the New York corporation?

A. About twenty years.

30 *Q.* Continuously? *A.* Yes.

Q. State the different steps of your employment?

A. I went in there as a boy and I worked myself up.

Q. In whose department?

A. In Mr. Schenck's department, in the selling department. At his death I was elected secretary, and then I was elected treasurer, in 1892, I believe, on Mr. Reed's death.

Q. Who succeeded Mr. Schenck as selling agent?

A. I did.

Q. Are you still the selling agent? *A.* Yes.

Q. Have you taken pains to collect as many of the old circulars and pamphlets of the company as you could get together? *A.* Yes.

Q. And does this lot here that are numbered from 1 to 47—the result?

A. Yes; but they are not all that were issued; they were all I was able to get.

Q. This does not include all that were issued? *A.* No. 10

Q. How did you get some of these?

A. By writing to our various customers and boards of fire departments who had them and kept them, and we make a rule of keeping one of each in the safe, and then they got so bulky that our safe got too small, and the question was whether to throw them away, and I believe some were thrown away.

Q. So you have done your best—

A. To keep all we could.

Q. To gather them from other sources? *A.* Yes. 20

Q. Now, what did you know about the issue of these circulars in Schenck's time, before you took charge of them?

A. Before the time of typewriters I used to personally address most of the envelopes, when I wasn't doing something else; our business then wasn't as large as it is now, and I used to go to the post office in New York, when they were in Nassau street, and get as many bags as we thought these circulars would take, stamp them, put them in the bags, deliver them to our truck and get 30 a receipt from the New York post office for them. In later years we have allowed business address companies to address our envelopes, delivered the envelopes back to us, we put the circular matter in, stamp them and deliver them to the post office and take a receipt for it back.

Q. Can you tell whether this mass of material that you have accumulated and produced here represent publications of your company or its predecessor?

A. Yes, I can testify since 1885 or 1886 that they do.

Q. And prior to that date?

A. I wasn't with the company.

Q. The earlier ones you can only tell by having found them or received them, and sending out to people to get them? *A.* Yes.

Q. Now, since your time, how large has been the issues of the various publications?

A. We would get estimates from printers based on
10 lots of not less than five or ten thousand, and perhaps some years we might send out thirty thousand, one year of one kind, and one five—it depended a great deal on the kind of circular it happened to be.

Q. What particular purpose for which you sent them?

A. What class of trade it was to reach.

Q. Look them over and tell us, generally speaking, about how large these last ones that you sent out—tell about where you know yourself about them; the earlier ones you cannot tell anything about the number, but be-
20 ginning— *A.* In 1886 I will start.

Q. Give the number and about what issue?

A. I should say 5,000.

Mr. Lindabury—What number is that?

Witness—No. 29. No. 30, the same quantity.
No. 31, the same quantity. There was a book published, it is published to-day, by a paper called "Fire and Water," in which we advertise, and they published a list of each fire department, giving the amount of apparatus, in fact, how many
30 men were in the department, the name of the chief, and there were about 5,000 at that time; now there are about 6,000. We keep one of those books in the office all the time. No. 32, I should say 10,000, because that went to the jobbing trade, hardware dealers, dealers in rubber goods of all kinds, a general circular; it was not confined to one particular line. No. 33, 10,000; 34, 5,000; 35, 10,000; 36, 10,000; 37, about 5,000;

38, about 5,000; 39, about 5,000; 40, about 5,000; 41, 5,000; 42, about 10,000; 43, about 10,000; 44, about 10,000; 45, about 10,000; 46, about 10,000; 47 was not issued by the New York office; 1,000 of those. 48, the pamphlet is missing, but if it is the one with the blue cover, it was 10,000.

Q. There are a few that have no dates.

A. 42 has just been published, in 1903; 43, in 1902.

Q. What time in 1902?

10

A. During the year; there were several issued.

Q. What time in 1903 was it compiled and printed?

A. They were copyrighted, and I can find out by that.

44 was in 1902; I should say early in the spring.

Q. What was the first issue of it in 1902?

A. Early in the year; I am positive of that. 42 was in 1903, 43 and 44 in 1902; 45 was issued in probably January, 1902. 46, I couldn't swear positively, but the post office box is 1330, and we haven't had that box for five or six years at least.

20

Q. You haven't had?

A. No; our box is 1464 now; I cannot swear to the date of that; 47, I cannot swear to the date of that, but that was ten years ago at least.

Q. And the blue pamphlet which isn't here, we can produce it? *A.* It was issued within two years.

Q. Whereabouts within the two years?

A. I should say 1901, two years ago.

Q. You mean at least two years ago? *A.* Yes.

30

Cross-examination by Judge Lanning:

Q. As I understand you, you have been testifying to the number of these different circulars that were printed?

A. Yes; that is about the number.

Q. Your testimony is confined simply to the number that has been printed, and not at all to their distribution?

A. Yes, sir; I explained about their distribution.

Q. Have you yourself personally mailed these circulars?

A. I have personally seen that they were put on our truck and got a receipt from the post office for so many bags of matter, yes.

Q. With respect to which numbers?

A. To all of them.

Q. Every one of these numbers? *A.* Yes.

Q. Do you state unreservedly and with full knowledge of what you say, Mr. Wies, that you have received receipts from the post office department for circular No.

10 31? *A.* I think a receipt was received, yes.

Q. Are you certain about it for circular No. 31?

A. Almost as certain as I am of anything.

Q. Have you got the receipt?

A. That I cannot say.

Q. Did you get a receipt for No. 37?

A. I imagine we did.

Q. You imagine you did? *A.* Yes.

Q. Is that the best answer you can give?

A. Personally I didn't get the receipt.

20 *Q.* You did not personally? *A.* No.

Q. But someone else did? *A.* Yes, for us.

Q. And is that true with regard to the other numbers? *A.* It is true as to all of them.

Q. You did not personally get the receipt? *A.* No.

Q. But someone else did? *A.* Yes.

Q. So that, so far as the securing of receipts is concerned, all the knowledge you have on that subject is what the messenger or someone told you with reference to it?

30 *A.* The same knowledge I have of any part of our business, and that it was properly carried out, and the result showed it was.

Q. And the information was given to you by someone in your employ that they had been mailed? *A.* Yes.

Q. And that receipts had been given? *A.* Yes.

Q. And that is the sum total of your knowledge?

A. Yes.

Re-direct by Judge Collins:

Q. Did you distribute the whole of the editions that were printed?

A. Yes; as soon as they came in from the printers—and order more if necessary.

Q. What do you know about hand distribution?

A. There isn't a day that we don't hand out numbers of circulars of all kinds.

Q. In the past years?

A. That follows ever since my connection with the **10** business.

Judge Collins—We offer this batch of advertising matter.

The Court—It is admissible now.

(Marked 1 to 48, inclusive, in red pencil.)

Benjamin Stowe, recalled for complainant.

Direct examination by Judge Collins:

Q. Have you brought in court some samples of your hose?

20

A. I have (producing samples).

Q. These are the samples; please describe them?

A. These are the samples showing the brands; I have a sample here with a rubber lining in; most of these have not the rubber lining inserted.

Q. (By the Court) These are the samples as they are sold in the market, and with the marks on them?

A. Yes.

Q. Every foot of it marked in that way?

A. Each fifty-foot section is branded in that way. **30**

Q. Each fifty-foot section has a mark which extends over it about how far? A. About a yard and a half.

Q. It isn't marked continuously?

A. No, not continuously; these samples are not rubber-lined; that sample (indicating) has a rubber lining in it. These tubes are compounded and made to our order; they are sent to us in this form; they are partially vulcanized only, coated on the outside with a vul-

canizable cement, and they need to complete the rubber process, they need further vulcanization. Now, we take that piece of hose tubing; we receive it in that form; we put it in a loom and weave a covering over it like this (indicating), passing through the loom, and the covering is woven about it; we weave over that tube, pass it through the loom and weave over that tube; after it is woven in that way we take it to the steaming table; we have a head which we fasten this tube upon,
10 pass it over and then we turn live steam within this rubber tubing; that expands the tube out into contact with the rubber lining, softens this cement upon the outside and vulcanizes it in that condition, and in contact with the fabric, and after it is steamed it is then in this form.

Q. That is one which is vulcanized?

A. Yes; the cement is vulcanized; it is completed and in contact with the fabric, and after that process we take it and put it on the testing table and see that the
20 rubber and fabric and all are right.

Q. (By Judge Collins) What is that circular piece you hold in your hand?

A. Eureka garden hose; three-quarter-inch Eureka garden hose.

Q. You have the component parts?

A. Yes. That (indicating) is the tube in a partially complete condition, only unvulcanized; it is prepared to our order, compounded to our specification, and it is coated on the outside with a cement which is vulcan-
30 izable.

Q. What company does that for you?

A. The Voorhees Rubber Company is at present.

Q. And they have a factory near yours?

A. Quite so.

Q. And they furnish it in the condition that that little piece in your hand now is, partially vulcanized?

A. Yes.

Q. And you either insert it in a cylindrical piece of fabric or weave the fabric around it? *A.* Yes,

Q. The larger piece there is of the same rubber?

A. Same type; it is partially vulcanized only; it is coated on the outside with a vulcanizable cement; that is 2½ inches in diameter. We have a fabric similar to this; for instance, we weave a fabric similar to three ply, one of the same size; we have a fabric like that on the larger sizes, and then after it is done we receive this tube; we first inspect the tube, pass over it carefully; if there is any of this cement—any deficiency in the cement we re-cement it, and we test it before we insert it; then we clean it and brush it thoroughly to see that all foreign substance is removed, and then we draw it through this fabric in this way. 10

The Court—Same process?

Witness—Yes; we draw it in by machinery; draw it in and then the process of steaming is the same as the small hose; we turn the steam within it, inflate the hose, expand it out, soften the cement and vulcanize the cement and complete the vulcanization of the rubber. After 20 that is done, then we remove it from the table, allow it to lie for quite a long time to cool, and then we put it on a testing table and test to see that there are no defects in either rubber or fabric—test it to high pressures.

Q. In these large sizes you don't weave the fabric around the rubber tube?

A. No; it can be drawn through readily afterwards, and it is less trouble to weave the fabric separately than to weave it about it, as the smaller one is woven.

Q. In all these samples of all the different kinds of woven hose that we see here you manufacture in the same way? *A.* Yes; the same way. 30

Q. Around a partially vulcanized rubber tube, and then put in the steam pressure and vulcanize the rubber and make a complete hose, of which this one is a specimen? *A.* Yes.

Q. So that is your completed product of a 2½-inch size rubber-lined cotton hose? A. Yes, sir.

Q. Now, what is this (indicating)?

A. This is a linen hose; that is usually used without rubber lining; it is sometimes rubber lined, but not generally.

Q. That has a distinguishing color?

A. This has a distinguishing color line in here; the Underwriters have a certain specification.

10 Q. What is the color line?

A. Red, white and blue, and they require each manufacturer to designate his hose by a specific color line, and we adopted the red, white and blue as our color line for that grade of hose.

Q. So your Underwriters hose has that?

A. Has that red, white and blue line, which is known to the Underwriters. Now, the Underwriters and other inspectors look for this hose—look for this line, and if they see a hose branded with our name and this color
20 line, they know it is an accepted brand, and the insurance interests, without that color line, even in this specific brand, they wouldn't accept it—(interrupted).

Judge Lanning—The evidence of the witness with respect to the color line is objected to on the ground of irrelevancy.

The Court—There is no complaint in reference to that in the bill.

Judge Collins—We shall show that this defendant issued its circular and adopted not only
30 our name, but this color, and as bearing on motive and intent, it will be legitimate, in our contention.

The Court—There is nothing of that kind in the bill.

Judge Collins—But as bearing upon the purpose, in using "Eureka," I think all the surroundings may be given.

The Court—I will hear you on that question.

Q. Another one that is here, marked "Eureka U. S. Brand," has the red, white and blue also, has it?

A. Yes.

Q. Now, these red, white and blue devices were adopted at the dates of these trade marks that show them, that are in evidence?

A. They were adopted before that.

Q. Prior to that? A. Prior to that.

Q. What is the process of manufacturing what is called rubber hose, not cotton rubber-lined hose? 10

A. This process is—

Q. Is that a sample?

A. Yes, this is a sample of what is called in the trade as rubber hose.

Q. Describe it.

A. This is a rubber tube which is placed upon a solid mantle.

Q. I don't mean the method of the manufacture of it altogether, but state what you do. That is done for you? 20

A. Yes, this is done to our specification and to our order, and our name put upon it by those who manufacture it. This is one of our product, but we don't sell them in as large quantities as we do the others; our principal product is rubber-lined fire hose, but there are cases where it is required, but we have these made to our specification and to our order.

Q. By the manufacturer? A. Yes.

Q. At present, the Voorhees Rubber Company?

A. Yes. 30

Judge Lanning—It isn't your product?

Witness—It is made to our order and to our specification

Q. You get it made to your order?

A. Yes. When we get it we test it, submit it to a high pressure test and examine it carefully to see—test it to see that it is in accordance with our specification, and then if it is we couple it, apply the couplings, and finish it in that way.

Q. And what is in between the inner and outer tube, the rubber, some fabric?

A. Cotton duck, which has several plies, and it indicates the number of plies. This (indicating), I think, is five ply, four or five ply.

Q. Which of these is the one that you deal the most in?

A. Well, we deal in a great many other brands than we have here; almost all the hose bears our name
10 "Eureka Fire Hose Company"; then we have in addition to that our principal grade of fire hose, the highest grade of hose is known as the "Eureka Fire Hose"; that is that brand (indicating) "Eureka Fire Hose Company."

Q. What name does it bear?

A. "Eureka Fire Hose"; sometimes we use larger letters than that, not always this size, but sometimes larger.

Q. It has the name of the hose and the name of the
20 company both?

A. The name of the hose and name of the company.

Q. And this one, then, is marked "Eureka Fire Hose," and then at the other end "Eureka Fire Hose Company" is the one of which you sell the most?

A. It is our highest grade; I don't know that we sell more of it.

Recess.

Judge Collins—I offer in evidence the certificate of incorporation, certified copy, of The
30 Eureka Rubber Manufacturing Company, the defendant, dated July 15, 1902.

Marked *Exhibit C 16*.

Major Marcellus Bailey, sworn for complainant.

Direct examination, by Judge Collins.

Q. You are an attorney and counsellor-at-law, practicing your profession in the city of Washington, District of Columbia? A. I am.

Q. Giving special attention to patent and trade mark law? *A.* Yes.

Q. And trade names? *A.* Yes.

Q. Have you been counsel for the complainant and its predecessor in various matters?

A. I have for nearly thirty years.

Q. You were called in and advised with and acted for them when they learned that the defendant was using the word "Eureka"? *A.* I was.

Q. Did you correspond with the defendant? 10

A. I did.

Q. Have you copies of your letters and the originals of theirs? *A.* I have.

Q. Will you produce them?

Judge Collins—With the consent of counsel for defendant, we will assume the notice given, and then they can produce the originals, and copies can be used tentatively.

A. I will give them in their order. The first, of which I have a copy here, was a letter written by myself in behalf of the Eureka Fire Hose Company, the complainant, to The Eureka Rubber Manufacturing Company of Trenton, New Jersey, dated October 31, 1902. 20

Judge Lanning—I won't object to the reading of these copies, save that this be understood, that I will produce the originals if we have them; they have not been called for, and then if I should discover any difference between the copies, I shall object.

The Court—They will be subject to correction 30 by the originals; notice not having been given to produce the originals, counsel for defendant states the originals are not here, but it is agreed that these may be read as copies, subject to be corrected by the originals, if produced.

Q. It was sent by you?

A. That was sent by me, by mail, to the person—to the company to which it is addressed.

Q. At Trenton? A. Yes.

Q. Postage prepaid? A. Yes.

Letter read and offered in evidence and marked *Exhibit C 17*.

Q. The signature is not here, but I suppose it was your signature?

A. I recognize that as being a copy made in my office.

Q. It would be your signature? A. Yes.

Q. To that what reply was received?

10 A. To that I received a reply dated November 26, 1902, from Mr. H. H. Hamill, who writes as a representative of The Eureka Rubber Manufacturing Company, and in reply to that communication that is the original.

Letter read and offered in evidence and marked *Exhibit C 18*.

Q. I will ask you what knowledge you have of any letters such as are recited in this one, *Exhibit C 18*, namely, one from you of November 18th, and one from
20 The Eureka Rubber Manufacturing Company November 11th?

A. I have no knowledge of the one from The Eureka Rubber Manufacturing Company of November 11th. I did not receive it to my knowledge. The letter of November 18th to the Eureka Rubber Manufacturing Company I wrote myself; it was written in view of their silence.

Judge Lanning—Objected to.

30 Witness—I will mail a copy of it; I have a copy at home.

Judge Collins—You had better send it.

The Court—The notice to produce will include that as well.

Q. The next one?

A. In answer to the letter which has just been read, I wrote to Mr. Hamill on the 28th of November, 1902, and I have here a copy of the letter so written by me.

Letter read and offered in evidence and marked *Exhibit C 19*.

Q. Proceed, Major.

A. In answer to that letter, I received a note from Mr. Hamill, dated December 10, 1902. I have the original here and now produce it.

Letter read and offered in evidence and marked *Exhibit C 20*.

Q. So there is no letter of the 5th?

A. None that I know of; a letter from me, no; there was none.

Q. Proceed.

A. The next was a letter which I received from Mr. Hamill, dated December 12, 1902. 10

Q. Of which you produce the original?

A. Of which I produce the original.

Letter read and offered in evidence and marked *Exhibit C 21*.

No cross-examination.

The Court—Is there any objection to the witness sending a copy of the other letter, with his affidavit, that it is a copy?

Judge Lanning—No, I should think not, and 20 if we have the original we will produce it.

Charles N. Candee, sworn for complainant.

Direct examination by Mr. Lindabury:

Q. Where do you live? A. Toronto, Canada.

Q. What is your business?

A. Rubber manufacturer.

Q. How long have you been in that business?

A. Seventeen years in Canada; five years before I went there. 30

Q. How are your goods disposed of?

A. We sell them directly and through agents.

Q. Have you been doing that every year?

A. Ever since we have been in business.

Q. What is the name of your company?

A. The Gutta Percha and Rubber Manufacturing Company, of Toronto, Limited.

Q. When was that organized?

A. Seventeen years ago, I think; I wouldn't be exactly sure; about sixteen years and a half, I think, the incorporation of the new company took place.

Q. Does it do an extensive business?

A. Yes, sir; through our country quite extensive.

Q. Have you handled any of the hose manufactured by the complainant in this case? *A.* Yes, sir.

Q. How much of it—I mean how many different
10 brands, if you limit it to brands?

A. Practically all other brands there are any demand for in our country.

Q. And how long have you handled them?

A. Ten years; a little over.

Q. Do you make a fire hose that is sold in competition with theirs?

A. We make a rubber fire hose—we used to make a cotton, rubber-lined fire hose that sold in competition, but for a number of years we have practically sold nothing else but the Eureka brands of fire hose.
20

Q. When did you cease manufacturing the cotton rubber-lined hose?

A. The jackets are not manufactured in Canada; we get the jackets over here and manufacture the rubber linings, and put them in in Canada.

Q. When did you cease doing that?

A. We do that now.

Q. Do you make any goods now of the same class or quality as the Eureka hose?

A. We make the very article; put the lining in this
30 Eureka fabric.

Q. Where do you get the fabric from?

A. From the Eureka Fire Hose Company here.

Q. Is that what you have been doing for some ten years? *A.* Yes.

Q. Did you make a fabric yourself at one time?

A. No; we only manufactured enough to protect a patent there; there was not enough business in the coun-

try to warrant the running of the looms in Canada, and we put them in and ran them for a short time, and decided it was more to our interest to get the fabric here, line them there and sell them.

Q. To what extent are these goods that you thus put out known in your country under the name of "Eureka"?

A. They are known principally by the name of The Eureka Brands of fire hose.

Q. Do you advertise them? *A.* We do, yes. 10

Q. I show you a circular that bears the name of "The Gutta Percha and Rubber Manufacturing Co. of Toronto, Limited," and ask you whether or not that is one you have put out to the trade? *A.* Yes.

Q. I observe no date upon it; is there one?

A. I don't know that there is; it is one that we issued, this particular one, I think, possibly two or three years ago—somewhere between two and three years. We have issued a number of these circulars, and this happens to be one of them. 20

Q. This is headed "Eureka Fire Hose," is it not?

A. Yes.

Q. How extensively were these distributed?

A. All over the country, wherever fire hose is purchased, our fire departments, where mills or any factory or anyone wished to purchase a fire hose, we would have those sent to them.

Q. Do you remember how many about you printed?

A. I think the issue of that circular is somewhere about 5,000 at an issue. 30

Q. And were all put out?

A. All there is demand for, or was demand for at the time; some were kept in the warehouse for distribution from time to time as the demand arose. Our practice is, first, when a circular of that kind is issued, to mail a copy to each fire department in the country, and then, as different sales or wants of hose are known, to mail them directly to the intending purchasers, and, in the case of

a corporation, to each of the councilors or committeemen who have the purchase in their hands.

Circular referred to offered in evidence and marked *Exhibit C* 22.

Q. I show you another circular under the name of "Toronto Rubber Company of Canada"; had you any connection or have you any connection with that company?

A. When that circular was issued we had none; we
10 now own the Toronto Rubber Company of Canada—bought out the charter and now own it.

Q. Do you know whether or not this circular was ever put out to the trade? *A.* Yes.

Q. What is your knowledge upon that subject?

A. When this was issued, it was—when the Toronto Rubber Company were competitors of ours, they were not manufacturers, they were simply dealers in the goods at that time, and our factory and head office being located at Toronto, a little confusion arose over it—(in-
20 terrupted).

Judge Lanning—Objected to.

Q. What do you know of the extent to which this circular was put out by the Toronto Rubber Company?

A. We met them constantly in our efforts to sell fire hose; they were distributed very generally—in fact, all over, to the trades and common councils.

Q. Are the Eureka cotton fire hose described in this circular—the ones made by the complainant? *A.* Yes.

Judge Lanning—The circular will speak for
30 itself. What is the reference to it?

Mr. Lindabury (reading)—"Eureka fire hose, strongest and most durable fire hose in the world. In active service in all the principal fire departments on this continent. The celebrated high-grade brands of seamless cotton mildew-proof fire hose. 'Eureka' brand, a triple hose, 'Paragon' brand, a double hose, 'Red Cross' brand, a single hose. Circular seamless woven hose of

distinct plies solidly woven together. The most perfectly constructed cotton fire hose ever produced."

Q. Was there any other fire hose at the time this circular was issued that would be described by this language which I have read?

A. Never heard of any other "Eureka fire hose."

Q. And did this company at that time deal in the fire hose made by the complainant? A. Yes.

Q. And did they sell or offer to sell, so far as you know, any other fire hose than that made by the complainant which at all answered to these descriptions? 10

Judge Lanning—Objected to.

The Court—I think the extent of his evidence on this must be to what in his knowledge of the trade, taking that circular, that would refer to.

Q. What, with your knowledge of the trade, would these descriptions of hose in this circular refer to?

The Court—Whose hose?

A. Hose made by the Eureka Fire Hose Company; 20 there are distinctive brands of hose.

Circular referred to offered in evidence and marked *Exhibit C 23*.

Q. I show you what is in form a letter from the office of the Chief Engineer of the fire department at Ottawa, November 23, 1888. Can you tell me whether or not that was published and put out as a circular to the trade?

A. It was.

Q. By whom?

Judge Lanning—I want to know the source of 30 knowledge.

Mr. Lindabury—It isn't in evidence.

The Court—From whom did you receive it; what do you mean, Mr. Candee?

Witness—In the sale of fire hose, it is a common practice to issue, among other advertising matter, copies of letters which come by way of testimonial or replies to inquiry. This document

here—that is a copy of a letter which was written by the chief of the Ottawa Fire Department, William Young, as it indicates, addressed to A. A. Andrews, Winnipeg; I know that was issued as a circular.

Q. By whom?

A. By the Toronto Rubber Company.

Q. How do you know of that?

A. Because at that time we were in competition with
10 them, and that particular one came into our possession in—by our agents when they come to sell the goods.

Q. What do you know, if anything, as to the extent to which that was circulated?

A. We used to meet it very generally, because wherever—this system of advertising was followed very generally at that time.

Mr. Lindabury—This is bound up here with a number of others, and I will call attention to them one after the other before having them marked.

20 I will mark that from Young to Andrews as “A.”

Q. The next, B, letter from the mayor of Perth, Ontario, to someone unnamed—W. J. Pink, the mayor of Perth, to someone unnamed, dated December 15, 1888. What do you know, if anything, as to whether or not that was printed and circulated?

A. The same remarks apply to this one as the other. This, in 1888, was before we had the sale of the goods. These are some that one of our men happened to have in a bunch with him; these happened to be done up
30 together, and simply I brought them down with me.

Q. Do you know of your own knowledge that these were circulated by the Rubber Company to the trade?

A. I do, positively, to intending purchasers.

Q. The next is dated City Hall, Toronto, July 5th, 1888, directed “To whom it may concern,” signed by “Thomas Sanderson, Secretary Fire and Gas Committee.” Was that printed and sent out?

A. Yes; that is a copy of it.

Q. What do you know about that?

A. The same as with regard to the others.

Q. Did you meet that in the trade?

A. This is one that came to us in that way.

Mr. Lindabury—That is marked letter "C."

Q. The next, marked "D," is dated City of Montreal, December 7, 1887, and by the purported chief of the fire department to A. A. Andrews, of Winnipeg? *A.* Yes.

Q. What do you say about that?

A. I have seen dozens, hundreds of them myself. 10

Q. Where?

A. I have met them and had to sell hose—our own hose we were selling at that time, and I came in contact with the sellers of the Eureka hose, and these were used against us.

Q. By the Rubber Manufacturing Company?

A. By the Toronto Rubber Company, who then were the agents of the Eureka Company.

Q. When was it that you took over the Toronto Company? 20

A. Our first purchase from the Eureka Company—
(interrupted)

Q. No, when you took over this rival company?

A. A little more than ten years ago.

Q. And did they represent the complainants in this case in the sale of their hose up to that time?

A. They were the agents at that time.

Q. Did the Toronto Company, before you took over their company, did they handle the goods made by the Eureka Fire Hose Company? 30

A. They had the agency, sole agency for Canada; we got it after we purchased the Toronto Rubber Company.

Q. And you have had it ever since? *A.* Yes.

Q. (By Judge Collins) You are now the sole agent and have been ever since? *A.* Yes.

Q. (By Mr. Lindabury) The next is a letter from Port Arthur, Ontario, dated February 18, 1888, signed

by the purported chief of the fire department. Do you know whether or not that was published and sent out to the trade?

A. I know positively that it was.

Q. To what extent?

A. I cannot tell that, but I know that we met a great many of them, and this one; this is a collection just put together by one of our travelers, that he has met in his travels and had against him, used against him at that
10 time.

Judge Lanning—I move to strike out what he says someone else did.

The Court—This is only to the effect that they were turned in.

Witness—I have met them myself, personally, in selling the fire hose myself, and it may have been these identical ones, but just like them, I can swear positively.

Mr. Lindabury—That is marked “E.”

20 *Q.* The next is a letter dated St. Thomas, Ontario, dated February 5, 1888, by the purported chief of a fire department there, and marked “F.” What do you say about that? *A.* The same.

Q. And the next one is from Belvidere, Ontario, February 20, 1888, by the purported chief of the fire department there; what do you say about that?

A. The same.

Q. Are you able to say with respect to these latter two or three what you did of the others? *A.* Yes, sir.

30 *Q.* Do you know whether they were circulated to the same extent that you say the others were?

A. Circulated generally throughout Canada.

Q. What do you know as to who circulated them?

A. The Toronto Rubber Company direct, and the agents handing them personally to the councilors or people who had occasion to purchase.

Q. Do you know of these agents doing that of your own knowledge? *A.* Yes.

Q. You had a hand in the sale of these goods, I take it from what you say? *A.* Yes.

Q. Now, in this bundle, what I will mark as "H," there is a collection of telegrams, seven in number, in the first batch; were they printed and sent out?

Judge Lanning—They are not the originals.

Witness—No; these are not the original telegrams. They are copies of telegrams sent to intending purchasers and salesmen, who may, perhaps, be in a city or a town endeavoring to sell his goods; the people don't know—are not familiar with the merits of his brands of hose; he, therefore, gives them the name of people to send telegrams to for information, and these are copies of replies; some of them are copies of the telegrams which were sent; also copies of the replies.

Q. The question is, whether or not these were printed and sent out as circulars?

A. In some cases; in many cases they were; in just 20 such circulars as those; I am not sure whether these particular ones were all circularized to the same extent as the others.

Q. Then, these are not produced here by you as copies of circulars that were actually sent out?

A. No; to show they speak of the Eureka cotton brands.

Judge Lanning—Never mind that. I object to it.

Q. You say that these goods manufactured by the complainant and put out by you as manufactured by them, or with the rubber put in the cotton fabric, have come to be known in your country as Eureka goods? 30

Judge Lanning—Objected to.

Q. What knowledge have you—I am calling now for your experience—what knowledge have you upon which you base the statement that the goods manufactured by the complainant, and those that you put out as manu-

factured by them supplemented by rubber, are generally known in your country as Eureka goods?

A. Because the inquiries come for Eureka hose, Eureka garden hose. These very telegrams indicate that the goods are known as the Eureka brands. We also, in our letterhead, right on our letterhead, advertise Eureka brands of cotton hose, and they are generally known as that.

Q. There is just now handed me something that pur-
10 ports to be one of your letterheads? *A.* It is.

Q. And I observe on that this: "Eureka brands cotton fire hose." How long have you used a letterhead having that on?

A. Several years; I cannot speak just from memory whether it would be five or eight or ten, but several years, anyway.

Q. How long have you used this identical letterhead?

A. I cannot swear exactly as to that.

Q. About how long?

20 *A.* For a long time; I don't know just how long.

Q. That is quite indefinite—two, three, four, five, six, seven or eight, or what?

A. Perhaps three years, this particular one, because it was issued—this has a recent addition to our factory on; we issued one which was similar in the wording here, but a smaller factory, before we made the addition, but that same matter there had been used, I can safely say, five years.

30 Letterhead referred to offered in evidence and marked *Exhibit C 24*.

Q. I show you what purports to be another letterhead of your company, do you recognize it? *A.* Yes, sir.

Q. There is written on that a letter dated January 20, 1900, does that help you to fix the time when you used that letterhead?

A. That was issued in January, the 20th, 1900. It was a circular sent the first of the year to all fire departments throughout the dominion of Canada, and it has "Eureka brands" there.

Q. How long had you used that letterhead?

A. I think we probably used that letterhead three or four, or possibly five years; it is a pretty long time; I don't remember.

Mr. Lindabury—I offer this, not merely for the letterhead, but also for the circular that is written below it.

(Marked *Exhibit C 25.*)

Q. How many of those did you send out?

A. An issue of circulars for our market would be **10** never less than one thousand, and probably never more than five thousand, but frequently we had to have issues reprinted, second issues of them.

Q. Do you know of your own knowledge of the sending out of these circulars of 1900?

A. That particular one?

Q. Yes?

A. I wouldn't swear that I actually addressed all these of that particular issue, but I know I have sent similar circulars to that many times, and handed them **20** personally to people.

Q. But have you personal knowledge of their actually being sent out, whether you addressed the circulars or not? A. I have.

Q. And to the extent that you have stated?

A. To every fire department in Canada.

Q. Now, I show you another circular, also on one of your letterheads, dated January 15, 1901, and ask you whether or not that was sent out by you?

A. Yes; another similar circular the year following; **30** the first of each year, as a rule, we issued one of these and sent it out.

Q. And to what extent was that sent out?

A. Every fire department in Canada.

Q. And have you personal knowledge of that?

A. Yes, sir.

Q. Now, in this, as I think in some of these others, there is some such statement as this: "Our principal

brands of fire hose are 'Maltese Cross' rubber; 'Eureka,' 'Paragon,' and 'Red Cross,' circular-woven cotton rubber-lined." What make of hose does that refer to?

A. The cotton rubber-lined refers to the Eureka weave of fabrics lined by ourselves; the "Maltese Cross" refers to our own manufacture.

Judge Lanning—That question is objected to on the ground that there is nothing in the circular identifying it with the name "Eureka" at all.

10

Q. Were there any other brands of hose in the market at this time known as "Eureka"?

A. I don't know of any.

Q. Were there any other known as "Eureka cotton fire hose"?

A. I don't know of any.

Q. Or "cotton rubber-lined hose"?

A. There are lots of cotton rubber-lined hose, but not as "Eureka rubber-lined hose," that I know of.

20

Circular referred to offered in evidence and marked *Exhibit C 26*.

Q. I show you another circular letter, on your letter-head, January, 1903, and ask you whether or not that was sent out by you? *A.* Yes, it was.

Q. When? *A.* In January, 1903.

Q. To whom?

A. To the fire departments throughout the country.

Q. And you know this of your own knowledge?

A. I do; as a rule, I composed the circulars myself.

30

Q. And what do you know about their being sent out?

A. Addressed some of them myself and had assistants address others; usually the man in charge of the fire hose business did actually do the addressing, with the stenographer, and do the posting, and he reported to me that it was done.

Q. What value or aid is the name "Eureka" stamped upon or connected with fire hose in selling it?

A. It is the most valuable name, in my opinion, in cotton hose, that there is in the world.

Q. And for how long has it had that value?

A. Ever since I had anything to do with the rubber business.

Q. And that is for what length of time?

A. I have been in Toronto selling it for ten years, and been connected with the Toronto concern for seventeen years.

Q. And why has it this value in the sale of rubber hose?

A. Because the hose has been good hose; it has made 10
a record for itself as being good hose, and people, in the
sale of fire hose—the average purchaser is not a judge
of hose itself, and I am speaking of our own country,
where purchases are made by members of councils who
are in office one year and out the next; hose is usually
known by its record and its use in fire departments; they
keep a record and know whether the hose has given good
service or not. When samples of various kinds of hose
are submitted to councilors, there are very few cases
where a councilor having to pass judgment upon it can 20
tell one from the other, except by its name; a hose which
has a good record of service in the department is very
much more liable to be selected than a hose which is not
known, and "Eureka" hose has been on the market for
so many years, and so favorably known, in my opinion,
it has a distinct value.

Q. Now, have there been any other goods sold in
Canada during the last year, so far as you know, as
"Eureka" goods? *A.* I don't know of any.

Q. I think you said you have had during the last ten 30
or eleven years the sole agency for the sale of these
"Eureka" goods there? *A.* Yes, sir.

Q. In the whole of Canada?

A. In the whole of Canada.

Q. And by that you mean the whole British Do-
minion? *A.* The whole dominion of Canada.

Cross-examination by Judge Lanning:

Q. Mr. Candee, have you stated what your connection with the company that you represent is?

A. I am secretary of it.

Q. And how long have you been its secretary?

A. Fourteen or fifteen years.

Q. How long have you been associated with it?

A. Seventeen years last October.

Q. Is your company a manufacturing company?

10 *A.* It is.

Q. What do you manufacture?

A. Rubber goods, mechanical goods, rubber boots and shoes and rubber clothing, bicycle tires—nearly everything in the rubber line.

Q. Do you manufacture yourselves fire hose?

A. We do.

Q. What kind of fire hose do you manufacture?

A. Do you refer to cotton or rubber?

Q. My question is broad enough to cover both?

20 *A.* We make both kinds.

Q. Do you, in the manufacture of rubber goods, manufacture the rubber itself?

A. We do; from the crude article—we don't get it from the tree.

Q. Do you manufacture the duck or other material that may be used in it?

A. No, we do not manufacture the duck.

Q. In the manufacture of cotton rubber-lined fire hose, do you manufacture the jackets?

30 *A.* No, sir; we have to a small extent; we don't manufacture them at all now.

Q. How long since you have discontinued manufacturing the jackets?

A. Speaking from memory, I should say it was about 12 years, somewhere thereabouts.

Q. By jackets, is understood the woven fabric that envelopes the rubber tubing?

A. That is what we understand by it.

Q. And that you have not manufactured for a dozen years?

A. Never at all to any large extent, in Canada.

Q. Where do you get your supply of cotton fabrics?

A. Practically—exclusively from the Eureka Company now.

Q. Then, do you insert the rubber tubing into the jackets as you get them? *A.* We do.

Q. And after having inserted the rubber tubing, what process do you put it through?

10

A. Vulcanize the lining to the jacket.

Q. Did you hear the testimony of Mr. Snow with reference to the manner of the process of vulcanizing cotton rubber-lined hose? *A.* I did.

Q. And is that the sort of work that you do?

A. Our practice is exactly similar; we actually do all the manufacturing of the tubes.

Q. When you get the cotton jackets, are they stamped with the name of the company complainant upon them?

A. Sometimes they are, and sometimes not; I 20 wouldn't speak positively in all cases.

Q. If you get the jackets from the complainant company, that are made for the express purpose of serving as jackets to rubber tubing, are these jackets in any case stamped with the name "Eureka"? *A.* They are.

Q. To what extent?

A. I don't know that I could just exactly tell you that from memory; some of them come stamped "Eureka"; they may all have, I know—I wouldn't swear positively as to that.

30

Q. We have here before us, for example, jackets of various sorts; one here before me is stamped "Eureka water-tower hose." Do you get anything of that sort?

A. There is practically none of that sold in Canada.

Q. I see one that is stamped "Eureka" and "New Peerless Jacket Fire Hose," do you get any of that sort?

A. We sell the "New Peerless" hose; if they didn't come stamped from here, we would stamp them anyway.

Q. You do get then jackets from the complainant company that are not stamped before you insert the tubing in them, and then stamp them yourself?

A. There is always an indication on the jacket, of one kind or another, of what it is.

Q. What is the fact? You do get jackets from the complainant company that are unstamped—you insert the tubing, the rubber tubing, and then you stamp them with the complainant's name "Eureka"?

10 *A.* I won't say that we get jackets that are absolutely without any stamp. Some of them come all completely stamped, and some of them we stamp ourselves. We use other brands just as they use them here, and put our own name on in addition.

Q. You do stamp the goods that you make, in the way that has been suggested, with the name "Eureka"?

A. Yes, we do stamp "Eureka" on them; we put the name "Eureka" on the Eureka hose; the Eureka hose we put the stamp "Eureka Hose" on it, because that is
20 what the people expect to get.

Q. Do you receive any jackets from the complainant company, in which you insert rubber tubing, that you do not also stamp before you put them upon the market?

A. I don't know of any now; we may have supplied hose to other dealers, that they put their own names on, which we put the jackets in.

Q. So far, then, as you now know, all the cotton rubber-lined hose that you put on the market known as "Eureka" is stamped by you?

30 *A.* You mean any goods, jackets we get that we do not actually stamp the word "Eureka" on?

Q. Yes.

A. I know there are jackets that we do not actually stamp the word "Eureka" on.

Q. And to some extent you do stamp the word "Eureka" on them? *A.* We do.

Q. Do you get from the complainant company cotton jackets that you put upon the market, without inserting in them any rubber tubing whatever?

A. No cotton jackets.

Q. Do you get any jackets of any sort which you put on the market in that way? *A.* Linen.

Q. I show you now a piece of goods that has been produced here by the other side, by the complainant, and is stamped "Eureka Underwriter Best Linen Hose," and also "Eureka Fire Hose Company," and I ask you if you deal in that kind of hose?

A. We have dealt in this identical kind of hose.

Q. Now, that kind of hose is not made for the purpose 10 of having rubber tubing inserted in it, as I understand it?

A. No, this particular kind is not usually rubber lined, this particular brand.

Q. When you get this kind of hose, this linen hose from the complainant company, do you in any instance, before putting it on the market, stamp it with the name "Eureka"? *A.* Our position is—(interrupted)

Q. Please answer that question.

A. I could do it positively by explaining a little further. 20

Q. Can you answer that question directly? (Question repeated.)

A. This particular kind, not; our hose has to have our distinctive—(Interrupted)—

Judge Lanning—You have answered the question.

Q. Do you get from the complainant any linen hose whatever which before putting on the market you do stamp with the word "Eureka"?

A. If we sell that—(interrupted)— 30

Q. Can't you answer that question?

A. Yes, if we sell this kind, but as I was about to explain, the underwriters make each manufacturer have his own distinguishing color line, just as Mr. Stowe, on the stand, testified, that their Underwriters brand of linen hose had the red, white and blue brand; ours has a red stripe.

Q. I understand then this, and if I am incorrect, you will correct me; that you do buy linen hose from the complainant company, that is, hose in which rubber tubing is never inserted, and you do put it upon the market after having yourself stamped the name "Eureka" upon it?

A. Well, I don't understand the question.

10 The Court—I understand the question to be this: When the hose is shipped from the complainants to you, the sections have not on it the stamp and words of the Eureka Company; when you afterwards sell it, you stamp those names on, that is the question.

Judge Collins—Speaking of linen hose.

The Court—This particular hose.

Witness—I cannot say that we do not stamp the name "Eureka" on any; I cannot say that none of it goes with the "Eureka" name stamped on it or not.

20 *Q.* (By the Court) When you sell it, then, if it has not already been stamped, then do you stamp the name on that hose?

A. We get brands of linen hose from them, which we sell under our distinctive name there; we wouldn't put the "Eureka" brand on.

Q. (By Judge Lanning) Now, my question is this, whether you get any linen hose from the complainant which before putting on the market you do stamp "Eureka"?

30 *A.* I don't know; I cannot say positively from memory whether we stamp when we sell that kind—if it is that kind of hose we sell, it is stamped by the Eureka Company.

Judge Collins—When you get it?

Witness—Yes, but if it is our distinctive brand
—(interrupted)

Q. But my question was not limited to the particular kind of linen hose that is now before you; my question is,

do you purchase from the complainant company any kind of linen hose whatever on which you stamp the word "Eureka" before putting it on the market?

A. I could hardly answer positively as to that, sir.

Q. Do you purchase any kind of linen hose whatever, in which rubber tubing is inserted, before you put it on the market? *A.* Very little.

Q. Any? *A.* Yes, we have lined linen hose.

Q. What kind of hose is that, for what purposes is it used? *A.* For hydraulic purposes.

Q. In fire department purposes? **10**

A. It is not used in fire departments, usually for mill protection or hotel protection.

Q. What do you purchase or have you purchased from the complainant company besides the cotton rubber jackets, without the rubber tubing and linen hose?

A. We have purchased some cotton rubber-lined hose from them, all completed.

Q. Ready for the market? *A.* Yes.

Q. When you have purchased cotton rubber-lined hose from the complainants, have you, before putting **20** it on the market, stamped the name "Eureka" upon it?

A. Not to my knowledge.

Q. You cannot say that you have not?

A. It would come with their regular brands on them; we just buy it in the regular course.

Q. What are their regular brands?

A. "Eureka," "Paragon," "Red Cross," "Trojan," "Pioneer," "Surprise," "New Surprise," "Monitor," "Helmet," these are all brands that occur to me.

Q. You have been dealing in all of these different **30** brands, have you? *A.* A large number of them.

Q. All of them or not?

A. Yes, I think we have had all of those.

Q. When cotton rubber-lined hose is purchased by you and bears the name "Peerless" and "New Peerless" upon it, or "Paragon" or any of these other brands you have mentioned, do you stamp anything upon them before putting them on the market?

A. If we put the linings in ourselves, we put our own name as the liners of the hose, beside the brand of the Eureka Company, our own name to identify our goods.

Q. My question was, where you purchased cotton rubber-lined hose stamped "Peerless," or "New Peerless," or "Paragon," or what not of the other brands you have named, do you, before putting them on the market, also stamp them with the name "Eureka"?

A. We never buy all of those brands that way, because the duty bringing them into the country, it wouldn't be possible to market them in our country that way.

Q. Now, explain that. Do you mean to say that fire hose that is thus stamped is subjected to an extra duty?

A. I mean that the completed fire hose is subjected to a different rate of duty coming into Canada than the jackets.

Q. Then, as a matter of fact, do you feel largely in—do you purchase largely from the complainant company cotton rubber-lined hose? *A.* We do.

Q. And pay the extra duty?

A. We don't buy the lined article; we put the linings in in Canada; we buy the jackets.

Q. You buy the jackets and you buy the tubing?

A. No; we make that ourselves.

Q. You buy the jackets? *A.* Yes.

Q. Now, then, when you buy the jackets you don't say that you are buying cotton rubber-lined hose, do you?

A. No, sir; we say that we are buying cotton jackets, cotton fabrics.

Q. If I understand you, I want to be corrected if I am mistaken, but I understand that if you buy cotton rubber-lined hose, that is the perfected thing? *A.* Yes.

Q. And you have to pay an extra duty, am I right?

A. We only very seldom buy that, particularly if we are exporting it out of the country; sometimes where it is more convenient to ship it from New York, but you

asked if we ever have, and I say yes, but it is not a general practice.

Q. I asked you a little while ago if you purchased to any great extent from the complainant company cotton rubber-lined hose, by which I mean the perfected thing?

A. Not largely the completed thing, only the jackets.

Q. Do you know of your own personal knowledge whether the complainant company manufactures rubber hose, as distinguished from cotton rubber-lined hose?

A. I know that they offer a brand of rubber hose; 10 I know they sell it, whether they actually manufacture it in the factory or not I am not aware.

Q. In the hose that you have purchased from the complainant company, have you known the word "Eureka" to be used alone, without any other word or words stamped upon the product?

The Court—You mean, now, when it is received from the complainants?

Judge Lanning—When received from the complainants. 20

A. I don't know as I could say as to that, just the plain word "Eureka," one word.

Q. I notice here several samples that have been produced by the other side, one is marked "Eureka Water Tower Hose," did you ever deal in that? *A.* No, sir.

Q. Another is marked "Fire Boat Hose," did you ever deal in that? *A.* No fire boats in Canada.

Q. Another is "Three-Inch Eureka"?

A. We have sold "Three-Inch Eureka" hose.

Q. Another one is "Eureka Peerless Jacket Fire 30 Hose," do you ever deal in that?

A. Yes; we have sold "Eureka Peerless Jacket."

Q. Another is marked "Eureka Peerless Jacket Fire Hose"?

A. We have also sold that.

Q. Another is "Eureka Tank Hose," have you sold that? *A.* Is that the unlined?

Q. Yes? *A.* Hydraulic hose; yes, we have used that.

Q. Another is "Eureka Woveknit Fire Hose"?

A. We have never sold any of that; we had a sample length or so.

Q. Another is "Eureka U. S. Brand"?

A. We have sold that.

Q. Another is "Eureka Mill Hose"?

A. Lots of it; we have sold lots of it.

Q. Another "Eureka Chemical Hose"?

10 *A.* Never sold any of that.

Q. Another is "Eureka Garden Hose"?

A. We have sold some of that.

Q. Another one is "Eureka Fire Hose"?

A. We have sold a good deal of that.

Q. All of these I just referred to by the names stamped upon them are cotton jackets, aren't they?

A. Those were.

Q. Are they all intended for rubber tubing?

20 *A.* All except that one, "Eureka Tank Hose," that is used in hydraulic mining or placer mining.

Q. I show you another sample, not of cotton rubber-lined hose, but of what is called "rubber hose," as I understand it, am I right?

A. That is what I know as rubber hose.

Q. This has been produced also by the complainant here today, and it is stamped "Eureka Fire Hose Company," carbolized with a trade mark of an eagle; have you dealt in that?

30 *A.* No, sir; we make our own rubber hose, under our own brand, "Maltese Cross."

Q. You will observe that in all of these samples that have been shown you the word "Eureka" invariably appears with one or more words. I repeat the question I asked awhile ago, whether you recall the word "Eureka" has ever at any time been stamped—the word "Eureka" simply, with no other words associated with it, have at any time been stamped upon any of the goods of the complainant company, so far as you know?

A. I cannot say whether that has ever been done; it might have been; thousands of feet of it might have come that way, but I cannot say positively from my recollection.

Q. The circulars to which your attention has been directed, being marked *C 22* and *23*, and also *A, B, C, D, E, F* and *G*, and also *C 24, 25* and *26*, who issued these circulars?

A. There are some that were issued by the Toronto Rubber Company and some that were issued by our own 10 company.

Q. Those that were issued by your company, whose business was it to mail them?

A. My business to see that they were mailed, and I did.

Q. How do you know they were mailed?

A. Because I gave instructions and saw it was carried out.

Q. You gave instructions to whom?

A. The man in charge of our fire hose department, 20 and mailed some of them myself.

Q. Of which circular did you mail some yourself?

A. I have mailed some of that (indicating); there is one uppermost there—I have mailed a good many of them myself—that one *C 22*.

Q. When?

A. At different times since they were issued.

Q. When was this issued?

A. I cannot say; it is not dated; I cannot tell from memory just when it was issued, but it has been issued 30 for some time—since 1900; that was one of the Eureka we got out; we previously issued others.

Q. Do you know to whom you personally mailed this circular, *C 22*?

A. I cannot recall names to give you just now.

Q. What knowledge have you that anyone in the employ of your company mailed other copies?

A. I have seen them directing envelopes, with a list of people to whom to send them.

Q. That is the extent of your knowledge?

A. Yes; and from their receipt afterwards know they have been received; received acknowledgments of them.

Q. As to the other circular, *C 23*, which appears to have been printed by your company, what personal knowledge have you as to the mailing of that?

A. That was not printed by our company; that was
10 one which came into our possession, circular by the former agents of the company.

Q. Then you have no personal knowledge of the mailing of this circular? *A.* I didn't mail that.

Q. You have no personal knowledge?

A. I have knowledge that they were mailed, because they have come into my possession.

The Court—Returned them to you?

Witness—Circulars received in the course of business.

20 *Q.* Did you receive this particular circular, *C 23*?

A. I didn't receive it at my office, addressed to me. It is a circular that has been picked up by one of our representatives in competition; that is, opponents in the fire hose contests.

Q. How do you know one of your fire hose representatives picked it up? *A.* Brought it in to me.

Q. Your knowledge is what he told you?

A. I have seen them often myself; I have seen them in selling fire hose, hundreds of them.

30 *Q.* Who is this Toronto Rubber Company, where located?

A. In Toronto, Canada; now owned by members of The Gutta Percha Company; I am secretary of it; I was not at that time when that circular was issued; we bought The Toronto Rubber Company ten years ago.

Q. So that it is practically consolidated with the Gutta Percha? *A.* No; it is a separate charter.

Q. Under the same management?

A. They are stockholders in common; I am a stockholder in both companies; but it is an entirely separate company from a local point of view.

Q. Are you the secretary of both companies? *A.* Yes.

Q. And they both have offices in Toronto? *A.* Yes.

Q. In the same building? *A.* Same building, now.

Q. Same office? *A.* Same office, now.

Q. Same board of directors or managers? *A.* No, sir.

Q. Who is William Young?

A. Late chief of the Ottawa Fire Department. It is the William Young who signed that circular.

Q. Who is A. A. Andrews, to whom it seems to be addressed?

A. Present manager of our Winnipeg branch of the Winnipeg Rubber Company.

Q. Branch of what?

A. There is a separate organization there, which he is a director and vice-president of, called the Winnipeg Rubber Company, and we have our branch out there, of which he is manager.

20

Q. Where was this printed?

A. That particular one?

Q. Yes?

A. I don't know; that is a circular that has come to my possession through having been circulated at different fire hose contests.

Q. This circular speaks of "Paragon Fire Hose"; that, I believe, is the only reference to anything that can be possibly relevant in this case?

A. It is one of the Eureka brands.

30

Q. There is a Eureka brand known as "Paragon," is there? *A.* There is; yes, sir.

Q. And have you ever known that brand to be stamped upon any of the products of the company, except in this way, marked "Eureka Paragon"?

A. I don't know—

Q. Or "Eureka Paragon Fire Hose"?

A. I have seen sections of fire hose stamped "Eureka Paragon."

Q. Have you ever seen a section of fire hose stamped simply "Paragon"? *A.* I have.

Q. Do you know when and where?

A. Stamping them every day, stamping nearly every day.

Q. Your company? *A.* Yes.

Q. Have you ever seen a section of fire hose stamped
10 by the complainant with simply the word "Paragon"?

A. Yes, sir—without their own name, just simply the word "Paragon" alone?

Q. Yes? *A.* I cannot say as to that.

Q. But you, as I understand you to say, your company in Toronto is in the habit of stamping fire hose with the word "Paragon" simply, without associating with it the word "Eureka"? *A.* Yes, we have done that.

Q. And do you likewise stamp fire hose with the simple word "Eureka"? *A.* Yes, with our own name on it.

20 *Q.* Do you likewise stamp fire hose with the words "Eureka Seamless Fire Hose"?

A. No, we do not stamp all that on.

Q. What do you stamp?

A. I think "Eureka Brand," or "Eureka Fire Hose"; I am speaking now from memory; I don't recollect of just the exact lettering that is stamped on the hose; it is "Eureka Fire Hose" and "Eureka Brand," and our company's name.

Q. Do you get any brands of fire hose from the company—the complainant company, known by the name of
30 "Baker"? *A.* We do not.

Q. A circular here refers to Baker Fabric Cotton Hose?

A. That is a brand of hose we used to sell, and only control the rights in it in Canada now.

Q. That circular is marked "G" in this batch of circulars; has that any relation whatever to the complainant's manufacture?

A. No, simply a number of these that I simply asked our traveler to get up, and that bunch was just handed over to me.

Q. Do you know where the factory of the complainant company is?

A. I don't know whether it is in Jersey City—it is on this side of the river somewhere; I think in Jersey City.

Q. Do you know where they have their principal office? *A.* I do. 10

Q. Where?

A. 13 Barclay street, New York City; that is the New York office.

Q. Have you seen any of the goods that have been put upon the market by the defendant company?

A. I have seen them from time to time, yes, sir.

Q. Have you noticed how they are stamped?

A. No; I cannot speak as to their branding.

Q. Do you know where the defendant company's factory is located? 20

A. I understand it is in Jersey City.

Q. The defendant?

A. Oh, I never heard of them before.

Q. When you answered Jersey City, you understood me to ask about the complainant company? *A.* Yes.

Q. If a piece of hose were submitted to you stamped with the words "Eureka Rubber Manufacturing Company, of Trenton, New Jersey," would you understand that hose to have been made by the Eureka Fire Hose Company of Jersey City? 30

A. I am somewhat familiar with the goods, and I might look at it first to see if it was; I would know the goods, perhaps, but one who is not so familiar would not.

Q. I am speaking of you?

A. If it had the brand "Eureka" on, I would naturally say it was from the Eureka Company.

Q. If you saw the words "Eureka Rubber Manufacturing Company of Trenton, New Jersey," would you

infer that that was the product of the Eureka Fire Hose Company of Jersey?

A. As I have never heard of any other company making fire hose but the Eureka Fire Hose Company, I would think it was one of their products.

Q. You would notice the change in the name, I suppose?

A. Might and might not.

Q. You would notice, having known that the complainant company was located at Jersey City, you would notice a change in the location, I suppose?

A. I might look into that.

Q. If your attention were drawn to the fact that it was located at Trenton, you would ask yourself whether it could be the Eureka Fire Hose Company of Jersey City, would you not?

A. A question of that kind might arise in my mind.

Re-direct examination by Mr. Lindabury:

20 *Q.* Did you ever stamp the words "Eureka" on any of these cotton-lined hose, except the jackets were made by the complainant company? *A.* Never.

Q. What quality of rubber did you use in lining the Eureka hose?

A. We have our regular standard lining. We put in the best lining that we make.

Q. The best you make? *A.* The best we make.

Q. And do you test such hose? *A.* Frequently test it.

Q. What kind of test?

30 *A.* It is all sold under a guaranteed pressure of 400 pounds to the square inch.

Q. That is the Eureka? *A.* That is the Eureka.

Q. (By Judge Collins) You make it to stand that test?

A. We do, and to stand a good deal more.

Mr. Lindabury—I offer in evidence the circulars marked *Exhibits C 22, C 23, the letter-heads C 24, C 25, C 26, and letter dated January,*

1903, about which I inquired of the witness, but neglected to have marked, *C 27*, and the batch of letters, in which the one from Young to Andrews is the first, and which are marked *A to F*, and which are marked *Exhibit C 28*, six in all.

Judge Lanning—Objected to on the ground that they do not tend to support the allegations of the bill of complaint, which relate to the word “Eureka” only as a trade name. These are invariably cases where the word “Eureka” is used with something else, “Paragon,” and so on, and in some cases where the word “Paragon” is used without the word “Eureka.” 10

Court—It will be admitted subject to the objection.

Daniel O. Arnold sworn for complainant.

Direct examination by Judge Collins:

Q. You live in Chicago? *A.* I do.

Q. And what business are you in? 20

A. With W. H. Salsbury & Co.

Q. What is their business?

A. They are dealers in rubber goods, mechanical rubber goods, and rubber goods generally.

Q. And in what capacity are you employed?

A. I have been with Mr. Salsbury ever since he was there, for thirty years; I went there first as bookkeeper, confidential man, credit man.

Q. And are still such? *A.* Still there with them.

Q. Does he handle the goods of the Eureka Fire Hose Company? *A.* He does. 30

Q. To what extent?

A. Well, we have sold some years over \$100,000 a year.

Q. In what way do you handle them?

A. They are consigned to us, and we make up accounts and sales every month, and send them to the factory with a check.

Q. Are you the sole agents of that general line of goods?

A. We have the sole agency in Chicago, yes.

Q. And you sold as high as \$100,000 worth a year?

A. A year, yes.

Q. How are those goods known in the trade, I mean by what name? A. Known as the "Eureka" goods.

Q. How long have they been known as such?

A. We have been their agents possibly eighteen or 10 twenty years; I see they were organized twenty-five years ago.

Q. Someone else dealt in their goods before your time?

A. They had no agent before we were their agents, but we bought goods of them.

Q. Do you come in competition with other manufactures? A. Oh, yes, sir.

Q. Did you ever hear of any other rubber-lined cotton hose being stamped "Eureka," except the hose of 20 their manufacture?

A. I never did, until within a few months.

Q. And then this defendant?

A. Then this defendant.

Q. Has attempted to sell hose called "Eureka"?

A. Yes.

Q. Has the name "Eureka" any value in your opinion? A. Oh, most certainly.

Q. Why?

A. Because of its good quality, and its reputation 30 throughout the country.

Q. What is that reputation? A. A number one.

Q. Is there any other hose in the market that stands as well as Eureka hose, of the same grade?

A. Well, I don't know of any hose that comes in competition with it to any great extent. This Baker Fabric Hose, that has been spoken of here, has stood well, but the Eureka Hose is known more widely than any other cotton hose made, I think.

Q. Do you know whether Eureka hose—what price it brings, relatively, for the same class of hose?

A. I don't know that I could state that. Their very best brand sells in the neighborhood of \$1.10 a foot for fire departments.

By the Court—The question is, relative value?

Witness—I think some of the best brands of cotton hose may sell as high as that, but they don't sell as much of it.

Q. Which has the largest sale? 10

A. I cannot state that. I cannot tell that, but I know that the fire departments have all probably more Eureka Fire Hose than any other one brand.

Q. Do you know how extensively the name "Eureka" has been used in advertising?

A. I don't know how I could state that, but as I say, its reputation all over the country is widely known; it is favorably known.

Q. Do you distribute circulars? A. Yes.

Q. How extensively? 20

A. Every year or two we get out some circulars, and circulate it through the fire departments, and through the hardware trade of the west.

Q. Do you devise them yourself?

A. Sometimes we address them in our stores; sometimes we have addressing companies attend to that.

Q. Do you devise the circular or pamphlet and send it out yourself, or do you sometimes have those sent to you from the home office? A. Not always.

Q. Do it on your own account? A. Yes. 30

Q. How do you style the goods?

A. We would style—

The Court—Have you the circulars here?

Witness—I have brought no circulars.

Judge Lanning—I object to the question.

Witness—On our own letter-head, on our correspondence, has the—(interrupted)—

Judge Lanning—I object to that.

The Court—Have you that here?

Witness—Yes, I think you have it, or did;
Mr. Wies had it this morning.

Q. Is there any other distinctive name by which the rubber-lined cotton hose, made by the Eureka Fire Hose Company, is known, except "Eureka"?

A. Except "Eureka," with their various brands which you see on the samples here.

Q. But any name by which it is—any distinctive
10 name?

A. No, it is the "Eureka," all times, on that brand.

Q. I show you a letter-head, is that your firm's letter-head? A. Yes.

Q. And has been in use how long?

A. That particular one has only been in use may be two or three years.

Q. But as long as that?

A. But we have always had a letter-head with that on, when we were the agents for the Eureka Fire Hose
20 Company.

Q. Cotton, linen, rubber-lined fire and mill hose?

A. Yes.

Q. This has upon it "Western Distributing Agents, Eureka Fire Hose Company, cotton and linen rubber, fire and mill hose"? A. Yes.

Q. You say this is three years ago? A. About that.

Q. You have always had similar letter-heads to that?

A. Yes.

Judge Lanning—I object to that last part.

30 Court—I will admit this letter.

Marked *Exhibit C 29*.

Cross-examination, by Judge Lanning.

Q. You said something about your house being the sole distributing agents for Chicago?

A. For the West.

Q. How long have you been in that position?

A. I think in the neighborhood of 18 or 20 years.

Q. Hasn't the Eureka Fire Hose Company had an office of its own in Chicago?

A. Well, they did for a while, just for their fire department goods.

Q. When was that? *A.* May be fifteen years ago.

Q. So long ago as that? *A.* I should think so.

Q. For how long a time?

A. For three or four years, may be four or five years.

Q. They discontinued that?

A. They had an office there, and an agent who sold **10** just fire department goods, and we handled at the same time their mill hose and their linen hose, and goods for manufacturing establishments.

Q. What goods of the complainant company have you handled? *A.* All of them.

Q. You have handled the cotton rubber-lined hose?

A. Cotton rubber-lined and the linen hose, both.

Q. Have you handled anything else?

A. And tank hose.

Q. That is cotton rubber-lined, isn't it? **20**

A. Yes, and there are hydraulic hoses without any rubber lining in it.

Q. Have you handled any other hose whatever of the complainant company, except cotton rubber-lined hose?

A. Why, yes; linen hose, I say.

Q. Cotton rubber-lined hose and linen hose?

A. Yes.

Q. Have you handled anything else?

A. No, sir; we have handled all that they make.

Q. All that they make? *A.* All that they make. **30**

Mr. Lindabury—We desire to move to amend our bill of complaint, so as to include the tri-color, which is referred to in some of the printed matter.

The Court—Prepare your amendment and show it to Mr. Lanning, and I will hear you on Wednesday morning.

Adjourned to Wednesday, December 23, 1903, at 10:15 A. M.

Continuation of examination pursuant to adjournment, taken this 23d day of December, 1903, at 10:15 A. M., before Hon. John R. Emery, V. C., at Chancery Chambers, Newark, N. J.

Present—Counsel as before stated.

10 *Benjamin L. Stowe*, recalled for complainant.

Direct examination by Judge Collins:

Q. Mr. Stowe, has your company received medals for their "Eureka" hose from various expositions?

A. They have.

Q. During the course of years in the business of the New York corporation, and the New Jersey corporation succeeding it—I mean the Eureka Fire Hose Company?

A. Yes.

Q. I mean during the course of those years was that
20 company always known to the trade by its corporate title, or did it get to be known by a different name, and, if so, what?

Judge Lanning—Objected to on the ground that it is a question for the Court to decide.

The Court—I think the question is leading.

Ask him how it was known in the trade; he may speak as to that.

Q. How is your company known to the trade?

A. It has gotten to be known as "The Eureka Com-
30 pany."

Q. The Eureka Company? A. Yes.

Q. And any other words used in the title at times?

A. The Eureka Hose Company.

Q. And any other word that you recall, indicative of the constituent parts of the manufacture?

A. Well, there is also known in connection with it—
(interrupted)

Judge Lanning—Objected to.

The Court—This company, in the trade, how have you known it to be spoken of or referred to? That is the extent of the evidence this witness can give in answer to his question.

Q. (By the Court) You say it is known as The Eureka Company, and the Eureka Hose Company, and now counsel asks whether there is any other.

A. It is addressed very frequently as the Eureka Rubber Company, the Eureka Manufacturing Company also.

Q. (By Judge Collins) But always with the word— 10

A. Word "Eureka."

Q. Your certificate of incorporation shows only, I think, \$1,500 of capital stock in the New Jersey Company; in fact, was that increased?

A. It was increased afterwards.

Judge Lanning—Objected to.

Judge Collins—I will get a copy of it and produce it.

Q. To how much? A. \$500,000.

Q. And that is the present capital? A. Yes. 20

Q. That was done after the incorporation? A. Yes.

Judge Collins—We offer in evidence the various exhibits of hose that have been produced here, and I suppose they will be sufficiently identified by what is marked upon them, but we will tag them and have the stenographer give them an exhibit number.

(Marked *Exhibits Sample 1 to 20, inclusive.*)

Cross-examination by Judge Lanning: 30

Q. Mr. Stowe, I think you said you were the vice-president of the complainant company? A. I am.

Q. How long have you been its vice-president?

A. Since '92.

Q. You were vice-president, then, of the New York corporation? A. I was.

Q. And also vice-president of the New Jersey corporation? A. Yes.

Q. You also said you were the general manager?

A. Not general manager, factory manager.

Q. Of the complainant company? *A.* Yes.

Q. And have been for how long?

A. Well, practically since the formation of the company.

Q. Do you mean of the New York company?

A. The New York company—the original formation.

Q. You have had no connection with the New York office?

A. Well, I am the vice-president and officer of the company.

Q. I mean to say, your duties are with the factory, are they not, and have been?

A. I am vice-president and in daily, constant communication, either by telephone, messenger, or in person, with the New York office—daily communication.

Q. Where is your office?

A. My office is at the factory, Wilkinson and Arlington avenue, Jersey City.

Q. You have never had an office in the New York place of business?

A. I have never been located there; I am in constant communication with them, either in person or—I have a desk at my disposal there all the time.

Q. This New Jersey corporation has been engaged in what kind of manufacture?

A. In the manufacture of hydraulic hose, principally, and other hose, composed of cotton, linen, rubber, metal, and also jute, flax; rubber and cotton are our principal manufactures.

Q. Does your company manufacture any rubber?

A. Yes.

Q. Where?

A. At our factory in Wilkinson and Arlington avenue.

Q. How long have you been engaged in the manufacture of rubber?

A. We have been vulcanizing rubber for, well, I think, ten years; certainly more than eight years.

Q. You speak of having been engaged in vulcanizing rubber. What do you mean by vulcanizing rubber?

A. I mean that we take the rubber in a practically vulcanized condition and we complete the vulcanization; we cause the vulcanized—the cement, cause it to adhere to the fabric; we complete one of the principal processes in the manufacture of the hose.

Q. What is the process of vulcanization of rubber? 10

A. The process of vulcanization is the application of heat to rubber in certain conditions.

Q. Now, my question awhile ago was with reference—as to whether you manufactured the rubber; do you?

A. We manufacture—one process in the manufacture, yes, more than one process.

Q. What?

A. The vulcanization, one of the most important processes.

Judge Collins—You say more than one? 20

Witness—Yes, more than one.

Q. What other, beside vulcanization?

A. The vulcanization, the steaming; we do this frequently—do this cementing of the tube, the application of the cement.

Q. I hand you a piece of rubber tubing produced by the complainant, which is marked "Sample 1," and ask you if your company made that, or any part of it?

A. No, not this.

Q. I hand you another piece of rubber tubing produced by the complainant, marked "Sample 2," and ask you if your company made any part of that, made that tube, or any part of it? 30

A. I don't know whether we cemented it or not.

Q. (By the Court) That sample is cemented—it is a rubber tube? *A.* Yes.

Q. On the outside of it is cement? *A.* Yes.

Q. (By Judge Lanning) If your company did any part of the work that has been done in producing this piece of tubing, in the shape and condition in which it now is, you did nothing except to put the cement on it; is that right? *A.* That is all.

Q. I show you another piece of rubber tubing produced here by the complainant, and marked "Sample 3," and ask you if your company made that, or any part of it?

10 *A.* We may have inspected it and tested it, but we did not produce it otherwise.

Q. You have done no work upon it, then, of any sort?

A. We inspected it and tested it very likely.

Q. What do you mean by inspecting it?

A. We put an inspector on it, who examined it very carefully and subjected it to a hydraulic test.

Q. Then the work that you have done, with respect to this sample 3, was in no sense any work in connection with the production of the article as it is; is that true?

20 *A.* Yes, we prescribed the specification for that hose—that it should be made in a certain way, of certain materials, and that it should not contain certain materials, that it should be of certain weaves, and so forth.

Q. That is to say, you prescribed the specifications to some other manufacturer than your company?

A. We did.

Q. You said that your company might have inspected this sample, did you not? *A.* I did.

Q. You don't know that it has?

30 *A.* I don't know about that particular sample; we do inspect—

Judge Lanning—That is enough.

Q. You have said that your company might have tested it, did you not? *A.* I did.

Q. But you don't know that they have?

A. Not that particular piece.

Q. So that, so far as you know, this particular piece, sample 3, may now be in the same condition it was when your company first obtained it from some other party?

A. That one may be; yes, sir.

Q. Does your company do anything whatever in the way of producing rubber tubing in the condition in which Sample No. 1 is?

A. It prescribes the exact specification to which that tubing should be made, it frequently cements the tubes, it frequently repairs the cement.

Q. Is Sample No. 1 cemented?

A. Sample No. 1 is cemented.

Q. Did your company cement it?

10

A. I don't know whether we cemented this sample or not.

Q. Does your company, with respect to rubber tubing, do anything further than to prescribe the specifications for its manufacture, and to cement it and test it?

A. It inspects it, and cements it, and tests it; it puts it into the fabric sometimes by weaving over it, sometimes by drawing in; it submits it to the vulcanization process which causes it to adhere; it further tests it and inspects it.

20

Q. Has your company any facilities whatever for taking the raw material of which Samples Nos. 1, 2 and 3 are exhibits, and producing them from the raw material?

A. We produce our cement.

Q. Please answer that question yes or no.

A. The cement that is employed upon that—

The Court—Do you mean raw rubber, crude rubber?

Judge Lanning—I mean raw rubber.

Witness—We take crude rubber and prepare 30 cement, which is produced on that.

Q. (By the Court) Your company prepares the cement?

A. Sometimes, not always; we do sometimes.

Q. (By Judge Lanning) In cementing the rubber tubing that you get, is that anything more than treating the surface of it after it is manufactured?

A. It is a necessary feature.

Q. Answer that, please; is it anything more?

The Court—He asks you to describe the process, not the effect of it. Is the cementing anything more than an application to the surface of the rubber tube?

Witness—No.

Q. Sample No. 3 has in it as one of its component parts duck, has it not? *A.* It has.

Q. Do you manufacture that duck?

10 *A.* We do not.

Q. I show you again sample No. 3, and ask you what the size rubber is in that sample? *A.* Cotton duck.

Q. How many layers of cotton duck?

A. I think five, I think.

Q. (By the Court) Mr. Stowe, will you please describe that sample, as it appears from the end of it, exposed; what is the inner ring or substance?

A. The interior is a rubber tube, and on the outside of that is wound, I should judge, five plies of cotton
20 duck, wound round and round.

Q. Those are five layers of cotton duck wound around the interior rubber tube? *A.* Yes, sir.

Q. Then what comes?

A. Then on the outside is another winding of rubber.

The Court—That describes it.

Q. (By Judge Lanning) Does your company have the facilities for winding cotton duck around an inner tube, covering the layers of cotton duck on the outside with a coating of rubber, as you find in sample No. 3?

30 *A.* We have some facilities, but not much facility for it.

Q. Does your company engage at all in the business of winding cotton duck about inner rubber tubes and covering the layers of cotton duck with a coating of rubber, as you find in sample No. 3?

A. No.

Judge Collins—Is that a coating?

The Court—He described it before as a layer of rubber.

Judge Collins—Is it a separate tube?

Witness—It is wound about on the outside.

Judge Collins—Rubber is wound about?

Witness—Yes, a layer.

Q. By whom was this sample No. 3 manufactured?

A. It was made by the Voorhees Rubber Manufacturing Company.

Q. Where are they located? *A.* Jersey City. **10**

Q. Do you purchase rubber tubing from that company in your business? *A.* We do.

Q. And do you purchase rubber tubing from other manufacturers, the rubber tubing to be used in your business?

A. We have not done so for several years.

Q. The company to which you have just referred, the Voorhees Company, is the only company from whom you have lately been purchasing rubber tubing?

A. Yes, sir. **20**

Q. And do they supply you with all of the rubber tubing you use in your business? Answer it yes or no.

A. That we have ever—(interrupted)

Judge Lanning—One minute; you are on cross-examination.

The Court—Answer it directly yes or no, if you can.

Q. (Question repeated) “And do they supply you with all of the rubber tubing you use in your business?”

A. Yes, but I wish to qualify my earlier answer to **30** say that we weave over some rubber hose for other manufacturers.

Q. I am not talking about the weaving process.

A. You asked if we covered rubber tubing.

The Court—The counsel is right; that explanation may be made at the proper time.

Q. In your business you do, as I understand it, weave cotton jackets? *A.* We do.

Q. For fire hose? *A.* We do.

Q. And you have produced a number of samples here of cotton jackets; are they all of your manufacture?

A. They are.

Q. Do you manufacture any kind of cotton jacket that is not here produced? *A.* We do.

Q. What? *A.* Oh, a great variety.

Q. What do you do with the rubber tubing which you purchased from the Voorhees Company?

10 *A.* On receipt it is carefully inspected; if cement is required, it is cemented; sometimes we cement and sometimes we do not. We then—in some there are two methods, one method is to put it into the loom, : weave the fabric about it, and then it is removed from the loom, taken to the vulcanizing table, and put upon the tables and machinery there, and the steam is turned into it, and it is vulvanized; the tube is caused to be expanded by the pressure of steam; the heat softens the vulcanizable cement on the outside.

20 *Q.* That is on the outside of the rubber tubing?

A. Yes.

Q. Causing it to adhere to the cotton jacket?

A. Causing it to adhere when it is vulcanized.

Q. To the jacket?

A. Yes; the heat—then while it is expanded the heat vulcanizes the cement on the outside and causes adhesion, and also completes the vulcanization of the tube; it is then removed from the table, the hose is allowed to cool, it is then taken to the testing tables and it is tested
30 under various pressures, from two to three and four hundred pounds pressure, and it is then taken to the coupling table and coupled. In case any—if defect should possibly develop on the testing table, in the rubber tube, we then remove the rubber from the hose by softening the rubber cement on the outside, and by drawing it out by certain methods we have.

Q. Drawing it out from the jacket?

A. Drawing it out from the jacket.

Q. Now, that is one of your processes you pursue in the use of rubber tubing that you purchase from the Voorhees Company; I think you said there was another, what is that?

A. Another method is to take the tubing and submit it to the same inspection, and then to cement it, if any is required, sometimes required and sometimes not; then draw it into the fabric and then put it on the steaming table and to vulcanize the cement upon the outside, cause it to adhere, and also to complete the vulcanization of the tube; the process from that point on is the same as with the other. 10

Q. I fail to see myself, probably due to my ignorance of the methods, any difference between your first process and second process. Tell us plainly what is the difference.

A. The difference is that in one case we weave about the tube, pass the fabric through the loom and weave about it, and in the other case we weave the fabric first and put the tubing in afterwards. 20

Q. (By the Court) It depends on the size?

A. Depends on the size principally.

Q. The smaller you weave over? *A.* Yes.

Q. (By Judge Lanning) Do you market any cotton jackets without the rubber tubing? *A.* We do.

Q. About how large an extent?

A. To a considerable extent.

Q. What proportion of your business of half a million a year is represented by the weaving of cotton jackets and putting them on the market without the rubber tubing? 30

A. I cannot say off-hand; possibly twenty to twenty-five per cent.

Q. The process of manufacture of rubber-lined hose, which you have described here, is adopted by many other manufacturers, is it not?

A. Well, I presume similar processes.

Q. There are other manufacturers who make and put upon the market cotton rubber-lined hose, are there not?

A. There are.

Q. Name some.

A. Well, the Fabric Hose Company.

Q. Located where?

A. Their office is in New York; the factory, I think, is in Newton, Connecticut.

Q. Name any others.

A. Do you wish me to say those who weave other fabrics?

10 The Court—The question was whether they put on the market cotton rubber-lined hose.

Q. Does the Fabric Fire Hose Company make the cotton jackets, as well as line them with rubber tubing?

A. I believe they do.

Q. Name any other companies that make the cotton jackets and line them with rubber tubing.

A. B. F. Goodrich Company, of Akron, Ohio.

Q. Doesn't the Boston Woven Hose do the same?

Judge Collins—He hasn't finished.

20 Witness—There are some others, but I don't recall.

Q. Doesn't the Boston Woven Hose Company do the same?

A. Yes; they put hose on the market.

Q. Doesn't the Empire Rubber Manufacturing Company of Trenton, New Jersey, do the same?

A. I don't know; they advertise it. I will state that my—yes, they advertise such hose.

Judge Collins—Do they make the jacket, that is the question.

30 Witness—I don't know.

Q. Does the Manhattan Rubber Manufacturing Company put upon the market cotton rubber-lined hose?

A. It does.

Q. Are there not a large number of manufacturers in the United States who put upon the market cotton rubber-lined hose, besides yours? *A.* There are.

Q. Is not the process by which the cotton rubber-lined hose of these various manufacturers is made sub-

stantially the same as your process; that is to say, either by weaving the cotton jacket about the rubber tubing and then vulcanizing it, or by drawing the rubber tubing into the cotton jacket and then vulcanizing it? *A.* I presume it is.

Q. What machinery have you in your place, your factory, besides the machinery for weaving cotton jackets?

A. We have the machinery for doing the work I have described, for cementing.

Q. Testing and cementing?

10

A. Cement the tubes, for drawing the tubes into the hose, for vulcanizing and for testing, doing all the work that pertains to the combining of the rubber tube in a partially complete condition with the fabric and complete the rubber tube.

Q. Do you manufacture your cotton jackets so that they are composed of different plies?

A. Some of them; yes, sir.

Q. How many plies?

A. Well, up as high as four plies; three plies, two, 20
one.

Q. Do you give the name of "Paragon" indiscriminately to cotton hose of different plies, or to the cotton hose of a particular ply?

A. We generally apply it to a particular ply; to the two or three-ply.

Q. The name "Peerless" is applied to what kind of manufacture by you?

A. That is applied to what is called "Jacket Hose"; it consists of one fabric drawn over another.

30

Q. How many ply?

A. Two; sometimes three.

Q. And to what do you apply the names "New Peerless"?

A. To a woven hose drawn over a knitted fabric.

Q. How many plies? *A.* Usually two.

Q. To what do you apply the name "3-in. Eureka"?

A. We apply that to the two, three or four ply of fire

hose; sometimes the name "Eureka" is applied also to single ply and to all the plies we make; the term "Eureka" is applied with others, and it is applied to various kinds; "3-inch Eureka" is for a three-inch fire hose.

Q. To what do you apply the name "Eureka Wove-knit Fire Hose"?

A. The wove-knit is a woven and knitted hose.

Q. How many plies? *A.* Two plies probably.

10 *Q.* Do you know?

A. Two plies; of course there might be an occasional additional ply added; occasionally an additional ply added.

Q. To what extent do you put upon the market rubber hose, not speaking of the cotton-lined rubber hose, the rubber hose with cotton jackets, but pure rubber fire hose? *A.* To a limited extent only.

Q. Does your answer, that you put rubber hose on the market to a limited extent only, apply to Sample 3?

20 *A.* It does.

Q. And do you use the name "Eureka" with any rubber hose? *A.* The name of our company is on—

Q. Do you stamp the word "Eureka" in any form on any rubber hose you put on the market?

A. We stamp it on all our rubber-lined cotton hose.

Judge Collins—Rubber hose.

Q. Didn't you understand me to have limited my question to rubber hose? If you didn't, I will make it plainer. *A.* No, sir, I did not.

30 *Q.* I will ask you again. Do you stamp the word "Eureka" in any form, with or without other words, on any rubber hose that you put on the market?

A. I am unable to answer positively that, I do not know; I am unable to say whether we do sometimes stamp the word "Eureka" on that hose or not. That one sample, he asks the question whether we ever apply it. I am unable to say; we put our name on it; we put our name on that hose, but I am unable to say whether we do sometimes stamp it differently from that or not.

Judge Collins—His question was whether you did it in connection with any other words.

Witness—We stenciled the "Eureka Fire Hose Co." on it.

Q. Do you stamp on rubber hose that you put upon the market the word "Eureka" in any other form than it appears on Sample 3?

A. I am unable to say positively.

Q. What are your brands of rubber hose that you put on the market, by what names are they known? 10

A. That is the one I am unable to say positively; perhaps Mr. Wies may be better informed on that, whether we put any other name on that or not.

Q. Don't you know that your company doesn't designate any rubber hose whatever that it puts upon the market by any brand name at all?

A. I don't know that.

Q. Do you put on the market any grade of rubber fire hose, other than that shown by Sample 3? *A.* Yes.

Q. What? *A.* Sometimes suction hose. 20

Q. That isn't fire hose, is it?

A. Yes, sir, fire hose, used for fire engine purposes.

Q. Running from the water supply to the engine?

A. Yes.

Q. Do you stamp on such hose any brand name whatever?

A. I am unable to answer that question, I don't know. "Eureka Fire Hose Co." we stamp on it, but I am unable to say otherwise.

Q. But that is not a brand name? 30

A. The name of the company, but the brand name I am unable to state.

Q. To what extent, in stamping your cotton hose, do you use your trade mark, being that of an eagle perched on a coil of fire hose?

A. To a considerable extent.

Q. Universally or not? *A.* No, not universally.

Q. Do you use your trade mark to any extent whatever on any rubber hose that you put on the market?

The Court—Pure rubber.

Witness—Is it not on that sample?

Q. Do you know whether you use it or not?

A. I cannot state positively; I think it is on there—(indicating).

Q. I call your attention to the certificate of registration of trade mark, marked *C 5*, and ask you on what
10 that single word "Eureka" is used in your business, without any other words, and as a trade mark?

A. It is used on fire hose, and fire hose chiefly.

Q. Will you show me a sample produced by you here, in which that is the case? *A.* I produce one.

Q. I show you a cotton jacket, marked Sample 5, with the single word "Eureka" stamped on it. What kind of hose is that intended to represent?

A. This is a sample of three-ply, or possibly four-ply hose. It is three-ply, with an inner ply.

20 *Q.* Rubber tubing to be inserted in it? *A.* Yes.

Q. Cannot be used without it?

A. No, not for fire engine purposes.

Q. In what respect does that particular sample differ from other samples that you put on the market?

A. Well, it is different weight and of different texture from some other fabrics.

Q. What is the length of a section of fire hose?

A. Fire hose is usually fifty feet.

Q. On a section of fire hose of the same kind as this
30 Sample 5, fifty feet in length, what else would you have beside the word "Eureka" stamped on it?

A. We would have our name, sometimes.

Q. What name?

A. "Eureka Fire Hose Co.," trade name.

Q. What else?

A. Sometimes we will have that design of the eagle and hydrant.

Q. What else?

A. And the size; sometimes we mark on it "Tested to 300 or 350 pounds."

Q. Have you ever put on the market at any time hose of the kind represented by Sample 5, with nothing stamped on it whatever but the word "Eureka," as this sample is stamped?

A. I am unable to answer positively that. I presume we have, not perhaps just like that, with the single word "Eureka," not like that.

Q. You say you have not, as to this kind of goods? 10

A. As to that particular brand, that black brand.

Q. (By the Court)—That is colored black?

A. That is a brand that is used more particularly in New York City. All the hose supplied to New York City for many years has had that brand.

Q. You mean in which the word "Eureka" is in black on white ground? *A.* Yes.

Q. (By Judge Lanning)—What do you stamp on the hose, besides this word "Eureka," in hose of this kind furnished to New York City? 20

A. We usually stamp our name, "Eureka Fire Hose Co."

Q. What else?

A. Sometimes the design of the eagle and hydrant.

Q. Don't you always do that?

A. I don't think we do.

Q. You are not sure?

A. I am not sure, but I know we don't in all cases.

Q. (By the Court)—Where is that work done, the stamping; after the sections are completed, where is the work of stamping done, at your factory? 30

A. It is done at our factory, but under the charge of the head of the department.

Q. Whenever you use a stamp upon your goods, the eagle, do you have in connection with it the words "Trade mark" stamped also on the goods? *A.* We do.

Q. (By Judge Lanning)—You have a stencil, haven't you, which enables you to imprint upon your goods the eagle and the words "trade mark," all one stencil?

A. Yes.

Judge Collins—It is more than an eagle.

Judge Lanning—The eagle perched on a coil of fire hose.

Witness—We have used the design without the words "trade mark" quite extensively.

10 *Q.* Which design?

A. That design of the eagle and the hydrant, we have used that without the words "trade mark."

Q. On hose of the kind represented by Sample 5?

A. I cannot say definitely this, because this is a special mark, more particularly that is used in New York City.

Q. Now, I ask you again if you can say that you ever have put any hose on the market of the kind represented by Sample 5 which contained on it the word "Eureka" and nothing else?

A. Not usually, but we have done it, I think.

Q. You cannot say positively?

A. I cannot say positively, but I am quite sure we have done it.

Q. Is it not true that in all goods that you put upon the market, where the name "Eureka" appears, it appears in connection with your corporate name or in connection with other words? *A.* Not always.

30 *Q.* Can you give us any instance, any kind of goods that you have put on the market, where you have had it stamped with the word "Eureka" not in association with any other word or words?

A. It is not unusual; for instance, in garden hose samples, we stamp the word "Eureka" on it.

Q. On the samples? *A.* The samples.

Q. Have you put upon the market any hose—

The Court—What do you mean by samples?

Witness—Samples of garden hose that we put on the word "Eureka," and there are different kinds of mill hose, when we send out a sample we put the word "Eureka" on it.

Q. I call your attention to *Exhibit C 6*, being the certificate of registry of another trade mark? A. Yes.

Q. Which appears to be composed of two lines of red and blue, with a white line between them. On what kind of hose do you use that?

A. That is used upon a hose that is made in accordance with underwriters' specifications—linen hose made in accordance with underwriters' specifications. 10

Q. Do you use that upon any hose whatever except linen hose? A. It is termed "Eureka Underwriter."

Q. No; this trade mark, the red, white and blue?

A. We use a similar one on cotton.

Q. On what kind of cotton goods?

A. On cotton fire hose.

The Court—Explain what you mean by underwriters' specifications. You mean that in certain classes of buildings underwriters require hose to be supplied in case of fire, and this is a method of designating hose that meets the standard of the underwriters? 20

Witness—Yes.

Q. There are several kinds of hose of different manufacturers, all meet the specification, and this is the way you distinguish yours?

A. The underwriters of the Factory Mutual Fire Insurance Company and the organization of the stock companies, called the National Fire—I don't remember the name now, each have a bureau; they met and they formulated certain specifications for hose, to which—and then they required that any hose—that before hose can be put into a building a manufacturer must submit sections of hose, pieces of hose, to them for test, and when they find that it complies to their requirements, then they accept it; they put it on their accepted list, and then 30

they specify for linen hose, for instance, that it must have a designated mark and a designated brand.

Q. Each manufacturer?

A. Each manufacturer. It must bear the word "Underwriter"; it must bear the word "Underwriter" and the name—and the special brand of the manufacturer, and special color lines; we adopted—

Judge Collins—They required the color lines?

10 *Witness*—Yes; we adopted the red, white and blue lines, and they have adopted it for ours, and they recognize our hose, whenever it is submitted, by these red, white and blue color lines, and they also require the word—for instance, on that, they require the word "Underwriter."

Q. On that you mean—

A. On this linen hose, to be branded "Eureka Underwriter"; it is known to them as "Eureka Underwriters' Hose." For instance, another manufacturer, the Boston Belting Company's may be known as "American Underwriter"; the Manhattan Rubber Company as "Economy
20 Underwriter"; they require the hose to be designated by a special name.

Mr. Lindabury—As well as by distinguishing color?

Witness—Yes, and by the name of the hose. Here is a sample of cotton hose marked "Sample 18."

Judge Collins—The color lines are on it?

Witness—Yes.

30 *Q.* The red, white and blue lines are waving lines, are they not? *A.* They are woven in lines.

Q. They are waving lines, are they not; they are not straight?

A. They are made as straight as the loom will produce them.

Q. These color lines used by you are woven into the fabric, are they not? *A.* They are.

Q. And, consequently, appear in the fabric longitudinally? *A.* They do.

Q. Through the section of hose? *A.* They do.

Q. They never appear in any other manner?

A. Not woven in, they cannot.

Q. Now, I show you Sample 6, produced by you, which is a linen hose, is it not? *A.* Linen hose.

Q. And it is stamped as you have indicated it should be, "Eureka Underwriter Best Linen Hose," "Eureka Fire Hose Co.," and it has the red, white and blue lines running through it longitudinally, has it not?

A. It has. 10

Q. That hose is complete in its present condition, isn't it, ready for use? *A.* It is.

Q. It doesn't need rubber lining? *A.* It does not.

Q. I also show you Sample 18, which is a cotton jacket, which would need to have the rubber tubing inserted before it could be used? *A.* Yes, sir.

Q. And that also has a red, white and blue stripe, has it not? *A.* It has.

Q. Running longitudinally? *A.* Yes.

Q. I observe that that stripe is on the brand marked 20 "Eureka U. S. Brand," "U. S." being in a circle; do you use that tri-colored stripe on any other than this brand? *A.* Yes, sir.

Q. On specimens of garden hose? *A.* Garden hose.

Q. You find it, do you not, on samples that are marked 12, 11 and 14? *A.* Yes.

Q. In all these cases the tri-colors run longitudinally, do they not? *A.* They do.

Q. Do you use the tri-colors in your business, in any instance except where they run longitudinally? 30

A. We have sometimes stamped these in colors.

Q. This circle with—

A. And this "U. S. Brand," we stamp that in colors; on sample No. 18 the red, white and blue colors.

Q. What is in red, where you so stamp your goods, what part of the device?

A. I cannot recall at this moment, because we have used black for quite a little time.

Q. Have you discontinued the use of the colors?

A. Not entirely, but we usually use the black because it is more convenient, but we still do use both marks, and I cannot recall at the present time just the mark.

Q. You don't know what portion of the device is in white or what is in black?

A. I cannot recall at the present time.

Q. Could any portion of that device be in white, the body of the jacket itself being white?

10 A. No; the colors are all red and blue, and white is the—the enclosed portions are in white, enclosed portions of the letters; the "R. K. A." are in white.

Judge Collins—The white is the fabric itself.

Q. I show you *Exhibit C 7*, having another trade mark, which is the brand to which we have just referred, the "Eureka" brand, with "U. S." in the center of a circle. Does that not show the red, white and blue stripe running through the center of the circle longitudinally?

A. It does.

20 Q. I call your attention to *Exhibit C 8*, being the certificate of registration of the trade mark "Woveknit"?

A. Yes.

Q. Do you use the name "Woveknit" on any hose except in connection with your name "Eureka Fire Hose Co." or with some other word or words?

A. No; we brand the hose "Eureka Fire Hose Co." with the "Woveknit."

30 Q. I call your attention to *Exhibit C 9*, which seems to be a certificate of registry of another trade mark "Eureka," and ask you what is the difference between it and certificate C 5, which also is a certificate of registration of a trade mark "Eureka"?

A. One is a renewal of the other. Under the first law they were declared unconstitutional for some reason.

Q. The first one is dated January 29, 1878? A. Yes.

Q. And after the act under which that registry was made was declared unconstitutional you had it re-registered, as shown by this certificate, dated December 19, 1893? A. Yes.

Q. I show you *Exhibit C 10*, which contains as a trade mark a figure of a section of hose, called "Eureka Spiral." Have you produced any sample of that?

A. There are none here, no, sir.

Q. That is a cotton rubber-lined hose? A. It is.

Q. And the triple line that runs through it in a diagonal manner indicates what?

A. Indicates that it runs about the hose spirally.

Q. Are they colored? A. They are.

Q. What color? 10

A. In colors sometimes red, white and blue.

Q. Are they described in the certificate?

A. I don't know. It was intended particularly to use on garden hose, and has the red, white and blue spiral line.

Mr. Lindabury—The kind of garden hose you produce?

Witness—Yes.

Q. C 11 is a certificate of the registry of the eagle perched upon—I have said two or three times the top 20 of a coil of fire hose, but I am evidently wrong; it is perched on a hydrant surrounded by a coil of fire hose?

A. Yes.

Q. You have produced here samples of goods with that trade mark stamped upon it? A. We have.

Q. You don't invariably use it? A. We do not.

Q. I notice that on the coil of fire hose are printed these words "Eureka Fire Hose," "Paragon Fire Hose," "Red Cross Fire Hose," "Surprise Jacket Fire Hose," "Peerless Jacket Fire Hose" and "Eagle Fire Hose." 30 Do you put all these brands on the market now?

A. Yes.

Q. There is one more certificate of registry of a trade mark, being *Exhibit C 14*, showing a section of a hose with a triple line running longitudinally through it; are those black lines in the product?

A. No; they are usually red, white and blue, red and blue with the white between; the fabric is white.

Q. These tri-colored lines about the marks are used only upon your linen and cotton fabrics, as I understand, that is right, is it?

A. I am not positive whether they have ever been put on rubber hose or not.

The Court—So far as you now know, that is the use?

Witness—Yes.

Q. Your certificates of registry, as far as I observe, 10 limit your application to the right to use them on linen and cotton fabrics; am I right as to that?

A. They are for those special fabrics, trade mark; of course we use those trade marks.

Q. That use thus designated?

A. Before we registered them we used them in various forms.

Q. And I am speaking now of the trade marks, those as registered? *A.* Yes.

20 Judge Collins—How long did you use them before you registered them?

Witness—I cannot say, but I think that garden hose registration was used for quite a time, but I cannot state definitely; the law requires that we shall have used them before we register them.

Q. I call your attention to Circular No. 10, offered in evidence yesterday, particularly to the illustrations of the jackets? *A.* Yes.

Q. The second figure represents a jacket made of different plies, does it not? *A.* It does, yes, sir.

30 *Q.* Of how many plies? *A.* That is three.

Q. I think you have already said that you manufacture also two plies? *A.* Two plies.

Q. Does the fourth figure represent one of those?

A. It does.

Q. Those plies are separable one from another, aren't they, as indicated in these cuts?

A. They may be separable, yes.

Q. Are they not made separable by you?

A. Well, the hose is solid there, but it is separated after weaving, in that particular hose.

Q. I mean that it is possible to cut a ply longitudinally along the section of hose, and then lay it open, is it not?

A. Yes.

Q. The outer ply? *A.* Yes.

Q. And you can do the same thing with the second ply? *A.* Yes.

Q. And the same thing with the third ply, if there be a third ply? *A.* Yes. 10

Q. When it is vulcanized with the three plies, can you then separate the outside ply?

A. The three-ply—in the ordinary solid woven hose, the three plies are woven together, and bound together, through the process of weaving. If we wish to separate them afterwards, then we cut the strands. We also weave what is called “Jacket Hose,” where the plies are woven separately and one drawn over the other.

Q. What is the occasion of separating them?

A. Only in samples, to show it can be done. 20

Q. For use?

A. No, we don't separate them for use. The word “Eureka” is intended to designate the highest grade of each of the kind of hose; the “Eureka” is the highest grade of multiple wove; the “Eureka Underwriter” is the highest grade of Underwriter hose, and the “Eureka Mill” is the highest “Eureka Mill Hose.” We use “Eureka” without the combining words sometimes; for instance, on the garden hose, we use the word “Eureka,” which designates and means it is the highest grade of 30
garden hose we make.

Q. (By Judge Lanning)—Is there anything stamped on the garden hose to tell the public that that is the highest grade of hose you make?

A. It is known so to the trade.

Q. My question is, is there anything stamped on the hose that tells the public that that is the fact?

A. The word “Eureka.”

Q. Does that tell the public it is the highest grade of hose you make? *A.* Yes.

Q. How?

A. The trade's knowledge of our reputation.

Q. It is only by the use of the word? *A.* The word.

Q. There is nothing in connection with the word that tells that story? *A.* The highest grade?

Q. There is nothing in connection with the word that tells that story?

10 The Court—Appearing on the hose itself, is the question of counsel.

Witness—No.

Q. I show you Circular No. 20, which also has a cut on the three-ply jacket, has it not? *A.* Yes.

Q. And they are separable in the same way as indicated on Circular 10? *A.* Yes.

Q. I understood you, Mr. Stowe, on your direct examination, to say that you had a store or place of business in Chicago, did you not?

20 *A.* We have a representation there.

Q. How long have you had?

A. I am unable to answer that question positively. I think it would apply more particularly—our selling agent will give you the details of that.

Q. For years?

A. Yes, but our selling agent—I cannot give dates in regard to that.

Q. Who is your general selling agent? *A.* Mr. Wies.

30 *Q.* How long has he been your selling agent?

A. Since 1892.

Q. Haven't you had anyone else to represent you there?

A. Our general selling agent in New York can give you particulars in regard to the selling department. Mr. Arnold came from there, but with regard to dates of his agency, I cannot say.

Q. But you have had a representation in Chicago for some time past, have you? *A.* We have.

Q. That is, some one to sell your goods?

A. We have.

Q. As your agent?

A. Yes. As I say, those queries with regard to our selling department, our general selling agent will give you direct information more than I can, Mr. Wies.

Q. Do you know Mr. Landy? *A.* No.

Q. Hasn't he been representing you for some years in Chicago? *A.* He did quite a number of years ago.

Q. How many years ago? 10

A. I cannot say; I know he represented us at the World's Fair in '92, but I don't know—it is quite a number of years since.

Q. You don't know when he ceased to represent you?

A. Yes.

Q. Do you know that he is representing you now?

A. I know he was not a few days ago, because he came in to see if he could get a position with us.

Re-direct by Judge Collins: 20

Q. What are the component parts of the cement that you speak of, that you apply where needed, and which you make yourself for application?

A. Rubber and the necessary vulcanizing materials—trade secrets, of course.

Q. I want to know whether rubber enters into the composition of the cement itself? *A.* Yes.

Q. You say you sell cotton jackets which you make to other dealers. Under what circumstances; let me understand that branch of your trade.

A. To other manufacturers. 30

Q. They then use it and stamp their own brands on it?

A. Yes, stamp their own brand.

Q. As to using the tri-color only on the cotton and linen hose, and you said fire hose, and cotton hose, and so on, but do you use it in any other way than on hose at all? *A.* We use it in our printed matter.

Q. In your advertising? *A.* Yes, sir; advertising.

Q. That which is in evidence here? *A.* Yes.

Winfield S. Knowles, sworn for complainant.

Direct examination by Judge Collins:

Q. Where do you live, Mr. Knowles?

A. Boston, Massachusetts.

Q. What is your business?

A. I am selling agent for rubber and fire hose of all descriptions.

Q. Selling agent for rubber and fire hose of all descriptions? *A.* Yes.

10 *Q.* Among others, are you the selling agent of the Eureka Fire Hose Co.? *A.* Yes.

Q. Of this State? *A.* Yes.

Q. And of the Manhattan Rubber Manufacturing Company? *A.* Yes.

Q. You are their selling agent, too? *A.* Yes.

Q. How long have you been in the business?

A. What do you mean, as their agent?

Q. In the business generally of selling rubber and fire hose? *A.* '91.

20 *Q.* Since '91? *A.* Yes.

Q. How long have you represented the Eureka Fire Hose Company?

A. I have personally represented them since '98.

Q. Before that?

A. Before that I was connected with my brother, who was their agent.

Q. And how long had he been? *A.* Since '91.

30 *Q.* So that the concern that you now are with, your own concern, your own office, that office has represented the Eureka Fire Hose Company since '91? *A.* Yes.

Q. And you have been there in that employ? *A.* Yes.

Q. What can you tell us about the Eureka fire hose?

A. The Eureka fire hose, as we handle it, is the garden and mill hose. The trade, when we first took it, was very small, and we have built it up in that territory to quite an extent; it increases every year.

Q. What is your territory? *A.* New England States.

Q. Headquarters in Boston? *A.* Yes.

Q. And you deal in the mill hose and garden hose?

A. Yes.

Q. What can you tell as to the quality of the hose of the Eureka Fire Hose Company, and of its relation to other hose of the same character?

A. We have always found the hose to be A 1 and superior to the other manufactures.

Q. Is the name "Eureka" any value in selling it?

A. It has, because there is a call for "Eureka" hose; that doesn't necessarily mean the "Eureka" brand, but 10 all the brands of their manufacture.

Q. Of whose manufacture?

A. The Eureka Fire Hose Company.

Q. What about the price?

A. The price is higher than other manufactures.

Q. The fire engine hose you generally sell to fire departments? A. Yes.

Q. So all the type of hose that would naturally come to an agent to sell would be garden and mill hose?

A. All we handle is mill and garden hose. 20

Q. By what name is the product of the Eureka Fire Hose Company known in the market; what is it called?

A. "Eureka hose."

Q. When people come in and ask for "Eureka hose," what is understood in the trade that they want?

A. They want goods made by the Eureka Fire Hose Company.

Q. How much has your trade increased relatively?

A. I should say that we have gone in the last three years practically twenty-five per cent. in advance over 30 the years previously.

Q. What is the reputation of "Eureka" goods throughout New England?

A. Of the first class, very well spoken of, and everybody we have sold them to have always been satisfied with them.

Q. What is the standard fire hose in that part of the country?

The Court—Is he in that business; if the witness knows.

Judge Lanning—Standard hose for what?

The Court—Fire hose.

Witness—You mean for mill purposes?

Q. Do you know? Answer generally.

A. Fire departments in mills; we have more inquiry for the "Eureka United States Underwriters."

Q. That is called the "Eureka U. S. Underwriters"?

10 A. Yes.

Q. I want to know, if you know, generally, without regard to special use, whose make of hose, of the best quality, is considered the standard in the trade?

Judge Lanning—Objected to.

The Court—Yes, you must prove that there is a standard, that he knows of the use of fire hose generally for fire purposes, and there is a kind of hose that is known as the standard; there may not be any.

20 Q. Do you know as to fire hose?

A. I can only say that in our business for mill hose we meet in competition with other concerns, who represent their goods as equal to the "Eureka."

The Court—That isn't quite the question. The question is whether you know enough about fire hose as used, not especially for mills, but the general use of fire hose, in connection, for instance, with the fire departments of cities—whether you know enough about that character or fire hose to be able to state that there is in

30

your section a recognized standard of fire hose. Judge Lanning—He says he hasn't dealt in fire hose.

Q. Confine it to mill hose.

A. As I said before, in competition we come across competitors who state that their product is equal to the "Eureka."

Q. Has the complainant, or its predecessor, the former corporation, the Eureka Fire Company of New York before it incorporated in New Jersey—have they any other distinctive word by which their goods are known, except “Eureka”; is that a distinctive word?

A. Not that I know of.

Q. Have there been in your market any goods known by the name of “Eureka,” except those that the company made, representing the Eureka Fire Hose Company?

A. I never have seen or heard of any other goods there for fire departments under the name “Eureka.”

10

Cross-examination by Judge Lanning:

Q. Has the mill hose used in mills been required to be approved by the Underwriters?

A. If the factory or the mill it is to be used in is insured under either one of the several boards they require an Underwriters hose; if not, otherwise.

Q. Isn't it a fact that the cotton rubber-lined hose, mill hose of other manufacturers than the Eureka Fire Hose Company, has been accepted by the Underwriters?

20

A. Yes, sir.

Q. Considerable number of others?

A. Some ten or twelve, I believe.

Q. Can you give the names of any of them?

A. Boston Belting, Revere Rubber Company, Boston Woven Hose, Voorhees Rubber Manufacturing Company, Manhattan Rubber Company, Goodrich Rubber Company.

30

Q. These all stand equal before the Underwriters' Association, don't they? *A.* Yes; so far as I know.

Hugh P. Matthews, sworn for complainant.

Direct examination by Judge Collins:

Q. You live in Illion, New York? *A.* Yes.

Q. And what is your business there?

A. I am in the candy, fruit and confectionery business.

Q. Do you know the defendant, The Eureka Rubber Manufacturing Company, of Trenton?

A. I know of them by correspondence.

Q. What official position do you hold in Illion?

A. Village clerk.

Q. Did you have some correspondence recently with The Eureka Rubber Manufacturing Company?

A. Yes, sir.

Q. You wrote them a letter on the 8th of December,
10 1903?

A. Somewhere in that neighborhood; I cannot say exactly when it was.

Q. Did you receive a reply?

A. Yes, sir; signed "Eureka Rubber Manufacturing Co., by S. V. B. Brewster."

Judge Collins—Is that from your concern?

Judge Lanning—We have no objection to it. Letter offered in evidence and marked *Exhibit*

C 30.

20 Q. And did you receive this letter from them also (witness shown letter)? A. Yes, sir.

Q. Shortly after its date? A. Yes.

Q. By mail? A. Yes.

Q. And so with the other?

A. Yes, I think those came together.

Letter dated December 9, 1903, from the defendant company, offered in evidence and marked *Exhibit C 31.*

30 Q. That letter, *Exhibit C 30*, refers to a sample of rubber hose coming forward? A. Yes, sir.

Q. And this came in its present condition? A. Yes.

Q. With the red, white and blue colors on it? A. Yes.

Q. And the words "Eureka Rubber Manufacturing Co." stamped on it? A. Yes.

Q. And "Acme" and "9½ diameter"? A. Yes.

Judge Lanning—I referred to this tri-colored matter yesterday and objected to it, and I have

examined the question this morning to some extent, but something was said about amending the bill.

The Court—I will take the evidence of this witness now about this, giving you liberty to move to strike it out if it is not made relevant by the proposed amendment. I won't now strike it out, because the witness should not be called back.

Judge Collins—We have formulated the amendment and handed it to Judge Lanning. 10

I offer this sample in evidence.

(Marked *Sample C 32.*)

Cross-examination by Judge Lanning:

Q. Did you write any letters to the defendant company respecting samples?

A. No, sir; we had bought hose from them before; had had their sample.

Q. From whom?

A. From the Eureka Fire Hose Company. 20

Q. Did you correspond with The Eureka Rubber Manufacturing Co. of Trenton?

A. No; with the New York office; the salesman.

Q. Did you answer these letters, or any of them?

A. No; I didn't answer them.

Q. Did you call at the office of the Eureka Rubber Manufacturing Company in New York? A. No.

Q. You have had no correspondence with them then, save that you have received some letters?

A. No; I didn't answer these letters at all; I wrote 30 for the sample.

Q. You wrote to whom?

A. To the representative in New York.

Q. Who? A. I cannot tell you his name now.

Q. Representative of which company?

A. The Eureka Rubber Company.

Q. You mean the Eureka Rubber Manufacturing Company? A. Yes.

Q. And not the Eureka Fire Hose Company?

A. No; Eureka Manufacturing Company, Rubber Manufacturing Company.

Q. At the time you wrote did you know of the existence of the Eureka Rubber Manufacturing Company?

A. No, sir—the existence of which?

Q. The Eureka Rubber Manufacturing Company; **10** you wrote to them? A. Yes.

Q. You knew of their existence? A. Yes.

Q. You knew where their office was in New York?

A. Yes.

Q. Where was it? A. I cannot tell you now.

Q. Do you also know of the Eureka Fire Hose Company? A. Yes.

Q. You knew of both of them? A. Yes.

Q. Did you know where the factory of the Eureka Fire Hose Company was located? A. No, sir.

20 Q. Did you know they had an office in New York?

A. Yes.

Q. You knew there were two companies, one Eureka Fire Hose Company and the other Eureka Rubber Manufacturing Company? A. Yes.

Benjamin R. Western, sworn for complainants.

Direct examination by Judge Collins:

Q. Mr. Western, what is your business?

A. In the advertising business, sir.

30 Q. You are the manager of the Manufacturers Advertising Bureau? A. I am the proprietor.

Q. Do you take charge of advertising in various trade papers and publications for manufacturers who want to get their goods before the public? A. I do.

Q. You select the newspapers where you think it will be useful, and make the contracts, and so forth?

A. I do.

Q. Now, I show you a great quantity of trade publications, and also magazines and other publications, and

ask you whether, in the course of your business, whether you, acting for the Eureka Fire Hose Company, procured the insertion of the advertisements that are marked in those various publications for that company?

A. I did.

Q. Each one has a blue pencil mark on the outside, referring to the page on which the advertisement appears? *A.* Yes.

Q. Those are since 1900? *A.* Yes.

Q. Now, did you advertise prior to that? 10

A. Yes, as far back as 1889, and possibly further than that, but I haven't the records.

Q. (By the Court)—Are these all alike?

A. No, sir; they vary in some respects.

Q. Is this a list that you made out, which gives the name of the publication and when the advertisement began? (Witness shown list.)

A. Yes, sir; it gives the date and everything.

Q. Does that include them all or not?

A. That includes all. 20

Q. There may be some of the newspapers, different issues? *A.* Yes.

Q. This is an index showing what individual publications they are and when the advertisement began?

A. Yes.

Q. Does this paper give an index to the various publications and when the advertising in them began under your contracts with them?

A. Yes, sir; it tells when it began.

Q. Do they run down to date? 30

A. On some of them, most of them.

Q. Have you produced all the back copies that you could conveniently find?

A. Yes, sir; it can be furnished; I cannot tell off-hand, but I can tell generally.

Q. Tell generally.

A. The paper called "Railroad Men" is an annual publication, and we have been running in that for two

or three years, and are in it at the present time, to the best of my knowledge and belief. This "Architectural Record," of New York, is a monthly publication now, and it has been running in that for two or three years, and running there yet. "The Tradesmen" is now in force, at the present time. "The India Rubber Review," of Akron, is in force at the present time.

Q. (By Mr. Lindabury)—This means, in all these cases, it has been in force from the time it appears on the
10 list? A. Yes, from the time it appears on the list.

Q. And down to now?

A. Yes, that is right; from the time it appears on that list. "Firemen's Journal" is alive at the present time. "Firemen's Herald of New York," "Southeastern Underwriter," of Atlanta, Georgia, I am not so sure about that, but I think it is alive. "Municipal Journal and Engineer," of New York, that is alive. "El Bombero de Cuba," published at Havana, that is alive.
20 "City Government of New York," I am not so certain about that; I think that was merged into another corporation, in one that I previously mentioned. "Fire Service Journal, Chicago," that is the same publication that was previously mentioned as being published at Akron, Ohio; they moved to Akron, Ohio. "India Rubber World, New York," that is alive.

Q. (By Judge Collins)—Is the advertisement continued?

A. Yes. When I say alive I mean they are running at the present time. "Insurance Advocate," of Philadelphia and New York, is running at the present time.
30 "Insurance Age," of New York, running at the present time. "El Comercio," Spanish publication, of New York, is running at the present time. Publication called "Cotton," of Atlanta, Georgia, is running. "Pocket List of Railway Officials," New York City, is running at the present time.

Cross-examination by Judge Lanning:

Q. These advertisements all purport to be in the advertisements themselves, as the advertisements of the Eureka Fire Hose Company, do they not? A. Yes.

Q. Of 13 Barclay street, New York?

A. 13 Barclay street, New York?

Q. Do they not? A. What did you ask me?

Q. They all purport to be advertisements of the Eureka Fire Hose Company of 13 Barclay street, New York? A. Yes, that is right. 10

Joseph L. Perley, sworn for complainant.

Direct examination by Judge Collins.

Q. Mr. Perley, you are a resident of New York?

A. Yes, sir.

Q. May I venture to ask your age? A. About 65.

Q. And in former years were you connected with the fire department of the City of New York? A. I was.

Q. From what time to what time, and in what capacity? 20

A. I joined the fire department of New York in '57.

Q. That is, as a fireman? A. Yes.

Q. Volunteer? A. I went through every grade and retired at '79.

Q. From what grade were you retired?

A. Fire commissioner.

Q. But what grade of service, in active service?

A. I was assistant engineer and chief engineer.

Q. In the fire department of New York? A. Yes.

Q. When was that? A. From 1869 to '73. 30

Q. From what time were you a fire commissioner?

A. The mayor appointed me fire commissioner in 1873, and I served until '79.

Q. During that period of being fire commissioner, was it a part of your duty to purchase the fire hose for the city? A. It was.

Q. How familiar did you become with fire hose during your service as commissioner?

A. I claimed to be quite familiar with the details, from the fact that I was in the repair shops when the department was organized. I came in contact with most of the hose that was used in those days, and up until the present I have kept run of it.

Q. In what way have you done that since you retired in '79?

A. I have got a brother in the fire department, and a son in the fire department, and I feel as much interested
10 in it now as I did twenty years ago.

Q. And do you give personal attention to it?

A. Considerable.

Q. What do you know of the Eureka Fire Hose Company's hose?

A. I know the "Eureka" hose is considered the best, from 1877 right along. It has been used quite generally in the department, in the fire department of New York, and other departments.

Q. Until when? A. Until now.

20 Q. The present time? A. Yes.

Q. By what name is it known?

A. The "Eureka Fire Hose."

Q. Are you the Mr. Perley who appears to have given with others, Mr. Vincent C. King and John J. Gorman, commissioners, the testimonial of the "Eureka Seamless Cotton Fire Hose," which is published in their book, *Exhibit No. 34* in this case, which bears the imprint of issue of 1886; the testimonial has no date, but it was at the time you were commissioner?

30 A. I was commissioner at that time.

Q. You did join in that testimonial?

A. Yes; that was in '77.

Q. That was in 1877? A. Yes.

Q. You gave it to the company with permission to use it?

A. The Board of Fire Commissioners did that. I did it not as individual. We did it as a board of fire commissioners.

Judge Collins—It is found on page 11 of the book marked 32.

Q. The letter said that up to that time 30,000 feet had been used; after that time, the department continued to use it, you say? *A.* Yes.

Q. Down to date? *A.* Yes.

Q. Have you any idea how extensively?

A. I know they bought 35,000 feet last year, and I think they bought 30,000 this year.

Q. So that it runs up into the thousands every year? 10

A. Yes.

Q. In 1886 there—

A. I wasn't in the board at that time.

Q. You don't know how much they had had up to that time? *A.* No.

Q. Did the department, in your time, test other hose of other manufacturers?

A. They tested every hose that was presented to them.

Q. With what result?

20

The Court—Comparative results.

A. It was the strongest and the lightest hose, which was a great necessity, on account of the tall buildings. We had to have hose that would stand enormous pressure, and had to have hose that could be handled by men, and we found that the "Eureka" hose was the hose for that purpose, for fire purposes.

Q. Does New York use any other hose than "Eureka"?

A. Oh, they have—yes, they use rubber hose.

30

Q. What proportion is "Eureka"?

A. It is difficult to tell, because every two or three years they have a change in the administration, and sometimes they buy hose to test, outside of the hose that they are using; they are looking for the best at all times.

Q. But do you know which is the larger kind of hose that they have had all along during this time, the largest?

A. They have been using principally the "Eureka," I think.

Q. You say you have kept yourself informed of fire matters down to date. Does that extend to an examination of their hose?

A. Yes; I naturally take an interest in all those things.

Q. How does the "Eureka" compare now, down to date, with other hose?

10 *A.* I think it stands favorably to-day, as good as ever, and I don't find anything that is any better yet.

Q. Is there any other hose, fire hose, that combines lightness and strength in an equal degree to that of the "Eureka" hose? *A.* I have never found it.

Q. You have said, I think, that the hose of this complainant, and its predecessor, called "Eureka," is known in common parlance as "Eureka" hose?

A. It is known as the "Eureka" hose.

20 *Q.* Do you know of any other hose that has gone by that name before this defendant undertook to use it?

A. I never heard of it, and never heard of the defendant's hose until I came here.

Cross-examination by Judge Lanning:

Q. You left the department in '79? *A.* May, '79.

Q. Having served as a commissioner for the last four or five years, up to '79?

A. Six years, a little over six years.

30 *Q.* Have you at any time recently personally inspected the samples of—the products of different manufacturers of hose?

A. I have. I went to their chiefs' convention and examined implements presented.

Q. What brands of Eureka Fire Hose Company's product have been used in New York?

A. I only know of the fire brand, the brand that is used for fire purposes.

Q. The testimony here, Mr. Perley, shows that there are various kinds of cotton hose made by this company,

the Eureka Fire Hose Company; there is the "Paragon," "Peerless" and "New Peerless" and others. Now, my question is, do you know what brands were used by the New York City Government?

A. They always used the "Eureka" hose, the four-ply, the best hose manufactured.

Q. When was that done?

A. That was done during my administration, and it is being done to-day.

Q. What names or words are stamped upon the hose, 10 do you know?

A. Simply know that the word "Eureka" is there, and I know it is the Eureka Fire Hose Company who manufacture it.

Q. "Eureka," with what other words?

A. "Eureka Fire Hose Co."

Q. Those are the words used? *A.* Yes.

Q. Is each section of hose stamped with the words "Eureka Fire Hose Co."?

A. I wouldn't say that, because I never took the trou- 20 ble to go over the fifty or sixty-foot lengths.

Q. The sections that have been stamped, so far as you have observed, have been stamped "Eureka Fire Hose Co.," haven't they?

A. I always noticed the "Eureka Fire Hose Co."; I never went into detail.

Q. You have never observed that on any of their products, the word "Eureka," without its full name, or what other word or words associated with it, have been stamped? What I mean is, you have never observed that the single word "Eureka," without anything else, 30 has alone been stamped on any of the hose, have you?

A. That I wouldn't say, because I don't remember the detail about that.

Q. But so far as you recall, the stamping has been "Eureka Fire Hose Co."? *A.* Yes.

Q. Do you know where the factory of the Eureka Fire Hose Company is?

A. I know it is in the State of New Jersey, but where, I don't know.

Q. I think you have said that you never heard, until you came here, of the Eureka Rubber Manufacturing Company? *A.* Never did.

Q. And if you should see the name "Eureka Rubber Manufacturing Company of Trenton, New Jersey," would you assume that to be the same as Eureka Fire Hose Company? *A.* I think not.

10

Re-direct by Judge Collins:

Q. Do you ever look further for an identification of hose than to find the word "Eureka" is on it?

A. That is all I would look for, the word "Eureka."

Re-cross by Judge Lanning:

Q. But if you found hose stamped "Eureka Rubber Manufacturing Company of Trenton, New Jersey," you wouldn't understand that to be the product of the
20 Eureka Fire Hose Company?

A. I should endeavor to find out whether it was the "Eureka" hose as made.

Eli Bates, sworn for complainant.

Direct examination by Judge Collins:

Q. Mr. Bates, what is your age?

A. I was 78 years of age the 13th of last September.

Q. Where do you live?

A. I live 434 East 116th street, city of New York.

30 *Q.* What has been your occupation, your calling?

A. I joined the volunteer department 29th of April, '46, and I remained in that until the 6th of September, '65, and I was appointed in the paid department as a district engineer.

Q. Paid department of New York city, Fire Department? *A.* Yes.

Q. Up to what—and from that you went through the different ranks? *A.* Yes.

Q. Up to what? *A.* Chief of Department.

Q. When were you Chief of Department?

A. I was appointed 19th of May, '73, and retired the first of May, '84.

Q. And are you still under pay of the city?

A. Pensioner.

Q. Half pay? *A.* Yes, sir.

Q. Now, what experience did you have with fire hose during your connection with the department?

A. My beginning, and for years, was leather hose, for 10 a great many years, and continued up into the pay department, and the first year or two they got, I think, 50 or 60 thousand feet of new leather hose, and then from that they introduced what was called rubber gum, the combination hose, about '67, the latter part, and that continued along until—principally used up to the time we come into fabric hose, or the cotton hose. In '75 the commissioners made a contract for 20,000 feet of cotton hose.

Q. Rubber lined, I suppose? 20

A. Yes; 15,000 of that was Boyd's hose; that was a lap-seamed, riveted, and the "Eureka," the first that was purchased, I believe, no seams, but solid woven three-ply; we received 5,000 feet in '76, and I had in use; I know two companies had had it at a big Broadway fire on the 8th of February, '76.

Q. Go on.

A. And then this was a very serious fire, and the commissioners made a contract that same year for 10,000 feet more of "Eureka," so then at the end of '76 30 they had 15,000 feet in service, and '77, the following year, they made a contract for 15,000 feet more, which made a total of 30,000 feet that I had the supervision of, using up to the first of May, '84.

Q. In 1884 is when you retired? *A.* Yes.

Q. Then I understand you to say that the Eureka Fire Hose Company introduced this seamless, rubber-lined hose? *A.* Yes; the first I—

Q. How did that hose stand the test of use until you left the department?

A. The best of any hose we had ever used.

Q. How was it known; by what name was it called?

A. "Eureka Fire Hose."

Q. Are you the Mr. Bates— *A.* Yes.

Q. Who gave a testimonial, which we find here, that they published, dated in '76? *A.* Yes.

Q. You authorized them to publish that testimonial
10 there, which is in circulation, No. 3; that is your letter
to them; did you authorize them to publish it? *A.* Yes.
Recess.

Q. Mr. Bates, have you kept run of the fire department since you retired on pension?

A. Since I was retired?

Q. Since you were retired on pension?

A. Not directly; I haven't given it much attention.

Q. Enough to know whether the "Eureka" hose is
20 still used by the New York department?

A. Yes; I know the "Eureka" hose is used in a great many places.

Q. In other places how extensively is that hose used?

The Court—How do you know it is used elsewhere?

A. From seeing it in use in different cities.

Q. (By Judge Collins)—How extensively is it used?

A. I wouldn't like to designate that at all; I simply know it is used.

30 *Q.* Is it used to a considerable extent or not?

Judge Lanning—Objected to. What do you mean by "considerable"?

The Court—It is indefinite. Ask him the use of it while he was in active duty.

Q. Were you in the habit of visiting other cities?

A. Yes, sir.

Q. Do you know whether while you were in active duty the other cities used the "Eureka Fire Hose"?

A. Yes; I know many cities used it, but I have got no records of quantities or no nothing about that; I don't want to go into that to state how much they used or anything of that kind.

Q. Do you know how extensively it has continued to be used in New York since you retired?

A. I haven't had any personal, any direct way of knowing how much they were using since I retired. I don't pretend to know anything about that; I only know about the time when I was chief and was retired. 10

Q. You gave other testimonials in later years, after that first one, did you, for them to publish?

A. Yes; in '84 I made a report to the National Convention in Chicago, giving my knowledge of the use of hose. In fact, the question was put, what was the most suitable at that time, and the report I made to the National Convention in September, '84. By that I certainly meant it was the "Eureka" hose.

Q. What is your judgment as to the best fire hose in use up to the time you quit active service? 20

A. I considered the "Eureka fire hose" superior to all others that I have known in my time.

Q. Here is one, No. 13, a testimonial. You identify that as genuine; is that printed from your original, in '77?

A. Yes; I give my expression and told them the amount of hose we had in use then.

Q. That is a genuine testimonial from you, is it?

A. Yes.

Q. In '84 you made a report to the National Con- 30
vention? *A.* Yes.

Q. I also see No. 34; that is one to the National Convention?

A. That is the report I made, and, as it described there, I established three districts in the City of New York.

Q. Has there been any other fire hose known as "Eureka," except the complainant company here, to your knowledge? *A.* I know of no other.

Q. That is the name it has always gone by?

A. "Eureka Fire Hose Company" is all that I know that kind of hose is made from, cotton or three-ply and rubber lined.

Q. And called what? *A.* "Eureka."

Cross-examination by Judge Lanning:

Q. When did you first know the hose manufactured by the the Eureka Fire Hose Company?

10 *A.* In '75, I know that the company was created; Junius Schenck was the first man I heard talking, and we received 5,000 feet in 1876 from that company, the hose that I have described.

Q. All of the hose used in the New York department, made by the Eureka Fire Hose Company, was cotton rubber lined, was it not? *A.* Yes.

Q. You never had in your service in New York any rubber hose known by the name "Eureka" or the Eureka's manufacture? *A.* No, sir.

20 *Q.* I think you said that the Eureka Fire Hose Company was about the first that you knew of that manufactured and put on the market cotton hose?

Q. Yes; that was my belief.

Q. You left the department when?

A. I mean hose of that quality, "Eureka"; I did not say they were the first to make a cotton hose.

Q. I understood you to say, on your direct examination, that the Eureka Fire Hose Company was the first that made and put on the market cotton hose?

30 *A.* No, sir; there is a mistake somewhere.

Q. Do you know any other company that in '75 or '76 manufactured cotton hose?

A. I know of the Boyd cotton hose, riveted and rubber lined, previous to the "Eureka."

Q. Do you recall any other as early as that?

A. No, sir.

Q. When did you leave the Fire Department?

A. First of May, '84.

Q. When you left in '84 had other companies set up in the manufacture of cotton rubber-lined hose?

A. Not to my knowledge; I cannot say positively.

Q. Have you kept tract of the manufacture of cotton rubber-lined hose up to the present time so as to be able to testify whether there are other companies now engaged in the manufacture of that kind of hose?

A. I cannot say what they are doing now, but I know up to the time when I was in the department there was another cotton hose that was introduced what was called a Baker fabric.

Q. Do you know anything about the products of the Boston Woven Hose Company?

A. No, sir; I cannot say.

Q. Or of the Manhattan? *A.* No, sir.

Q. The only three kinds of woven hose that you have knowledge of at the time you left the department in '84, then, is the woven hose of the Eureka Fire Hose Company, and the Baker hose that you referred to, and the third one, the Boyd; that is all, is it? 20

A. Yes, sir; the Boyd's was the first that I ever knew of; the "Eureka" was next and the Baker fabric was the next cotton hose.

Q. And since '84 there may be others, for aught you know? *A.* Certainly.

Q. Do you know where the factory of the Eureka Fire Hose Company was located in '75 and '76?

A. To the best of my knowledge, in the first production of "Eureka" hose; it was located in 22d street, near Second avenue. 30

Q. New York City? *A.* Yes.

Q. To what place was it afterwards transferred?

A. I only know by reading and hearing, to Jersey City. I don't know; I have never been to the factory.

Q. Did you ever know or hear of their factory being elsewhere than in New York City or Jersey City?

A. No, sir.

Q. The hose that you have seen in use in New York City of the manufacture of the Eureka Fire Hose Company bore names stamped upon it?

A. I only knew it by the name of the "Eureka," which was three-ply seamless hose and rubber lined.

Q. And did you know that was the manufacture or product of the Eureka Fire Hose Company of New York or Jersey City?

A. I am speaking of New York City as we received
10 it, as a three-ply hose, the "Eureka," that is what they called it, the "Eureka," that designated the different kinds or quality they made.

Q. They did make different kinds and qualities, did they?

A. They did, but I never used either the "Red Cross" nor the "Paragon."

Q. Did they have the "Red Cross" at that time?

A. Yes; they had the "Red Cross," and "Red Cross" on the hose.

20 *Q.* And did they have the brand known as the "Paragon" at that time while you were in the department?

A. I won't say positively, but I think they did; I don't say positively they did, but I know them to manufacture them three brands, because I know they manufactured the "Red Cross" in my time.

Q. Now, then, do you know whether the hose known by the name of "Red Cross" was stamped "Eureka Red Cross Fire Hose"?

30 *A.* I don't recall the words being put on, but I think there was a red cross on the hose.

Q. Do you recollect the name "Eureka Fire Hose Co." being stamped upon the hose?

A. I think it was; I wouldn't say positively, but I think the words were stamped on those.

Q. So far as you ever observed, the name "Eureka Fire Hose Co." was stamped upon the hose?

A. I think it was; I am not positive.

Q. You would not, I suppose, mistake that name for The Eureka Rubber Manufacturing Company of Trenton, New Jersey?

A. If I seen the words "Eureka Fire Hose Co." I would naturally suppose it was the Eureka Fire Hose Company that produced the "Eureka Cotton Hose."

Q. You would naturally suppose it was the company of Jersey City, would you?

A. Well, I suppose that factory is in Jersey City from what I have read. 10

Q. And if you saw on the goods, or on advertisements, the name "Eureka Rubber Manufacturing Company of Trenton, New Jersey," you would not take that product to be the product of the Eureka Fire Hose Co., of New York, or Jersey City?

A. No, sir; I would not.

Re-direct by Judge Collins:

Q. Chief, you say you cannot tell exactly whether the name of the company was stamped on the hose, but is there one word that you do know was stamped on the hose, and, if so, what word? *A.* "Eureka," I suppose. 20

Q. You spoke of their being at 22d street, and after you left the department, in Jersey City. Do you recall that for awhile they had a factory in Brooklyn, about 1882?

A. The Eureka, I don't know anything about that; I cannot bring anything to recollection; at the 22d street factory, Mr. Schenck took me to that factory when they first started. 30

Q. Did you ever know where the Eureka Fire Hose Company's principal office in Jersey City was? Did you ever know yourself—not their factory, but their principal office, where that was?

A. I didn't know anything about that, sir.

Re-cross by Judge Lanning:

Q. You say that you suppose the word "Eureka" was stamped upon their goods? A. Yes.

Q. Was the word "Eureka" used along with other names, so that it was "Eureka Fire Hose Co."?

A. I cannot say positively about that.

Q. Do you recall whether you saw the word "Paragon" stamped upon any of their goods?

A. I am not saying positively about that.

10 Q. You have already said that you saw hose with a red cross stamped on it? A. Yes.

Q. Did you see hose with the words "Red Cross" also stamped on it?

A. I cannot answer that; I stated that designated a single ply, red cross; "Paragon," two-ply.

Judge Collins—I now produce and ask to have marked copy of the letter from Marcellus Bailey, dated November 18, 1902, together with his affidavit.

20 Judge Lanning—We have no objection to your using it.

(Marked *Exhibit C 17½*.)

John Brennan, sworn for complainant.

Direct examination by Judge Collins:

Q. You live in Jersey City? A. I do, sir.

Q. And what is your occupation?

A. Fire Marshal of the Pennsylvania railroad, located at Jersey City, my headquarters.

30 Q. How long have you been in that position?

A. Since 1891.

Q. What has been your experience in regard to the extinguishment of fires?

A. Well, the fire appliances of the Pennsylvania railroad come under me; as Fire Marshal, my experience is, of hose, that the "Eureka" fire hose is the best fire hose manufactured.

Q. You have to purchase the hose for the Pennsylvania railroad?

A. Nearly all letters for the purchase of hose, for all the stations around the Pennsylvania system, New York, Brooklyn and Jersey City, their ferries, their docks and piers, comes nearly on my letters of recommendation.

Q. What experience had you had that led to your being employed in this position as Fire Marshal for the Pennsylvania railroad?

A. I had six years' experience as an active fireman in Jersey City, foreman of an engine company, Engine Company No. 3, Mercer street; afterwards elected by the people of the city three times, two years each term, as a commissioner, and afterwards appointed by the Mayor of Jersey City for two terms of three years each, making 12 years in all experience as commissioner in Jersey City. 10

Q. You were one of the members of the Board of Fire Commissioners? *A.* Yes.

Q. What were those years, from what time to what time?

A. I was elected in 1881 a commissioner for two years, and elected twice after that, making in all six years as an elective commissioner in Jersey City. 20

Q. And then appointed?

A. Then, in 1891, I was appointed by Mayor Wanser, 1891, 1892, commissioner for three years; afterwards re-appointed, when my term expired, for three years more.

Q. During those twelve years what had the Board of Fire Commissioners of which you were a member to do with the fire hose?

A. My recollection of the fire hose—

Q. What had you to do with fire hose? 30

A. They used fire hose for extinguishing fires, of course.

Q. Did your board purchase them?

A. Yes, our board had the purchase of all hose that was used in the department.

Q. I think you were president at one time?

A. I was twice president of the board.

Q. For a year each time? *A.* Yes.

Q. So that you had to purchase fire hose for the city?

A. Yes.

Q. Now, what has been your experience with the "Eureka" fire hose?

A. My experience with the "Eureka" fire hose is that it was the best fire hose manufactured.

Q. What is your experience?

A. My experience dates back to 1884.

10 *Q.* What was it?

A. Then we bought some, I think, some four or five thousand feet of "Eureka" fire hose; that was the first batch that come under my observation and memory of purchase of hose.

Q. At that time you were commissioner?

A. Yes, at that time I was commissioner.

Q. And after that, how extensive were Jersey City purchases during your time?

20 *A.* In my time, with the exception of one break, Jersey City always bought "Eureka" fire hose. One year the Boston Woven Hose managed to get their hose into Jersey City, but outside of that, in my time, from that time on, the Jersey City Fire Department—the fire commissioners always bought "Eureka" fire hose, and are buying it to-day—bought 3,000 feet the other night.

Q. About how much fire hose do they have in use at one time?

30 *A.* I guess—I am pretty well satisfied that Jersey City Fire Department uses from 25,000 to 30,000 feet of hose—that they have that much hose in service to-day.

Q. They have to keep it up as it wears out, and buy other hose and keep up that stock?

A. Every year they buy a certain quantity of hose to keep up for the wear and tear.

Q. What is your knowledge of other brands; you say the "Eureka" fire hose is the best; what do you compare it by; what means of knowledge have you that it is the best?

A. We have had several brands; the Boston woven hose, that I remember, and there was 3,000 feet of that put in at the time I referred to, and it didn't give very good satisfaction. The "Eureka" brand of hose gives the best satisfaction, so far as my knowledge goes.

Q. I want to know whether other people sent samples and you tested them or examined them, or looked at them, or in what way you instituted a comparison to find out?

A. Yes, at all times, when the Board of Fire Com- 10
missioners would advertise for hose, we would have all the hose agents from all over the country there pretty nearly, submitting samples, and of course they all claimed their hose was superior to the "Eureka," but they never could convince John Brennan that.

Q. They would claim it was superior?

A. They claimed it was equal, and some would say superior, but they generally wanted to try to make it appear it was the equal to the "Eureka."

Q. What would their prices be?

20

A. Their prices generally were under.

Judge Lanning—I object to that as irrelevant.

The Court—That may be relevant.

Q. Under? *A.* Generally under.

Q. You say they would say that it was as good as the "Eureka." Do you mean they would refer to "Eureka" themselves?

A. Yes; knowing the Jersey City commissioners generally purchased "Eureka" hose, they would always draw that comparison; they would say their hose was 30
equal if not better, to the "Eureka," and try to claim they could sell it at a less price.

Q. What was the name by which this hose was known and referred to, the hose you used? *A.* "Eureka" hose.

Q. Was that name stamped on it?

A. The name was stamped on it "Eureka Fire Hose,"
"Eureka Fire Hose Co."

Q. Both? *A.* Yes.

Q. The name of the company and the "Eureka Fire Hose," too? *A.* Yes, that is it.

Q. What does the Pennsylvania Railroad use?

A. These last years since I have been fire marshall of the company, all the hose in use on the docks, ferries and stations around the Pennsylvania Railroad, are "Eureka," several brands; the "Eureka" brand, down around the station on our main pump line, or all along our fire pump line, the station, the cove, and we use
 10 "Eureka" and nothing but "Eureka"; that is the best brand of their hose; then, I have "Paragon," and I have "Mill Hose" in use around the various places where the pressure is light; where pressure is light I use "Mill Hose," made by the Eureka Fire Hose Co.

Q. Do you regard the name "Eureka" as of any value? *A.* I do certainly regard it of value.

Q. Why?

A. From its reputation; this hose, its reputation throughout the length and breadth of this land, I have
 20 been to chief engineers' conventions in all parts of this country, and its reputation is well known all throughout the country.

Q. By what name was it known, what name was given to it? *A.* "Eureka."

Cross-examination by Judge Lanning.

Q. By what name is "Red Cross" known?

A. "Eureka" brand, the "Red Cross Eureka Fire Hose"; the "Red Cross" brand, I never bought much
 30 of that.

Q. By what name is the "Paragon" known?

A. "Paragon" brand of Eureka Fire Hose."

Q. The "Paragon" brand is stamped how?

A. "Paragon Brand of Eureka Fire Hose," if my recollection serves me right; I am not quite positive, but I think that is the way it is stamped.

Q. "Mill Fire Hose"?

A. "Paragon Brand of Eureka Fire Hose."

Q. You don't mean to say that it is stamped on the hose with the words "Paragon Brand of Eureka Fire Hose"?

A. I won't say in just those words, but that is about the meaning of it.

Q. Is not the name "Eureka Fire Hose Co." stamped on the hose, on the "Paragon"?

A. Probably it may be that way; I ain't quite so positive on that.

Q. And isn't the name "Eureka Fire Hose Co." 10 stamped on the hose containing the brand "Red Cross"?

A. I suppose it is; I haven't bought much of the "Red Cross," I haven't bought any, in fact.

Q. Then what would you call the "Eureka" brand, stamped "Eureka Fire Hose Co."?

A. The "Eureka" brand, "Eureka Fire Hose Co."

Q. And that is stamped with the word "Eureka" alone, is it? *A.* Not to my knowledge, I think not.

Q. It is stamped now "Eureka Fire Hose Co."?

A. That is it.

20

Re-direct by Judge Collins.

Q. I suppose this brand wears out after a little use, so it is not easily perceptible?

A. When the hose gets dirty, of course.

Q. But aren't the couplings stamped?

A. They are, in the fire departments; you take the Jersey City Fire Department, when a batch of hose comes in—when they receive any new hose they stamp all couplings and put the date on.

30

Q. They do it themselves? *A.* Yes, as a record.

Q. Not the company?

A. Not the Pennsylvania Company.

John J. Voorhees sworn for complainant.

Direct examination by Mr. Lindabury.

Q. Where do you live, Mr. Voorhees?

A. Jersey City.

Q. What is our business?

A. Manufacturer of rubber goods.

Q. How long have you been in that business?

A. Thirty-three years.

Q. How long in Jersey City? A. All of that time.

Q. What rubber goods do you manufacture?

A. Hose, belting, packing, valves, general line.

Q. Are you in business for yourself?

A. I am president of a corporation, Voorhees Rubber Manufacturing Company.

Q. How long has your present corporation been in existence? A. Five years.

Q. Before that time what was your business?

A. I was connected for 28 years with the New Jersey Car Spring Rubber Co.

Q. Which was in business in Jersey City?

A. Same business.

Q. A large concern? A. Yes.

Q. You make rubber goods, did you say? A. Yes.

20 Q. It has been testified here that you make the rubber linings of the complainants, rubber-lined cotton hose, or some of them, is that a fact? A. It is a fact.

Q. How long have you been doing that?

A. In both connections since '75.

Q. Did the New Jersey Car Spring Company make them? A. Yes.

Q. What is the name of your present corporation?

A. Voorhees Rubber Manufacturing Company.

30 Q. Do you make these upon special orders, I mean the linings for the complainant's goods? A. Yes.

Q. And who furnishes the specifications?

A. They do.

Q. And are they made subject to a test or not?

A. Yes, sir.

Q. And has that been so from the beginning?

A. Yes, sir; from the beginning.

Q. What is the test that they are required to come up to or sustain?

A. There are many lines of specifications.

Q. Different kinds are subject to different tests?

A. Yes.

Q. Is it a high test for quality? *A.* Yes.

Q. And what kind of material do you use in making those linings?

A. For the better grades the very highest materials; for the lower grades some not so good.

Q. Which are the best grades? *A.* Fire hose.

Q. And among the fire hose are there different grades, 10
or in the fire hose do you make all of the highest grade?

A. Well, we make two high grades, and especially one, and one next in grade.

Q. Do you know what hose they are made for, if they are made for a particular hose?

A. I know that the better grades are made for their better grades of fire hose.

Q. Have you known of their "Eureka" hose for some years? *A.* Yes, sir; from its beginning.

Q. Do you know whether it has been put extensively 20
upon the market or not?

A. Probably to a larger extent than any other brand made.

Q. What do you mean by that, than the manufacture of any other company? *A.* Of any other company.

Q. Within what area?

A. Certainly within the last fifteen years.

Q. Within what territory? *A.* The United States.

Q. Larger than any other in the United States?

A. Yes.

Q. Do you know of any company anywhere in the world that makes this line of goods in greater quantity? 30

A. I think it is the largest in the world.

Q. And have they considerable trade outside of the United States, if you know? *A.* I think so.

Q. Do you know what the reputation of their goods is? *A.* The very highest.

Q. How are they known to the trade, by what name?

A. The Eureka Company, you mean?

Q. The Eureka Company's goods, by what name are they known to the trade? *A.* "Eureka" goods.

Q. Are they usually spoken of in that way?

A. Yes, sir; almost invariably.

Q. Have you been about the country in a business way enough to know of this in different localities?

A. Yes.

10 *Q.* And is this designation of them general throughout the country? *A.* I think so.

Q. Do you know whether they are usually stamped or not with the word "Eureka"? *A.* Yes.

Q. In some form or other does that occur on all of them? *A.* Yes.

Q. And how long has that been so?

A. As long as they have made the goods.

Q. And how long have they been known generally by the name "Eureka"?

20 *A.* Ever since they were first put on the market.

Q. They have different brands, "Paragon" and "Red Cross" and others? *A.* Yes.

Q. Is this name "Eureka" applied to all of them?

A. As a general line, yes, sir.

Q. "Eureka" goods with the different brands?

A. Yes.

Q. Do you know whether or not this name "Eureka" is a name in the sale or disposition of the goods?

A. I regard it so, yes, sir.

30 *Q.* Why?

A. Because they have advertised it very extensively, because they have had the reputation for making good goods ever since they began business.

Q. Do you know whether or not, from your connection with it, their product has deserved this reputation?

A. I certainly think so; I certainly think it has.

Q. Has their class of goods been uniform and of high grade? *A.* Yes, sir.

Q. Do you know of any other in the market superior to theirs? *A.* I don't think there are any as good.

Q. I mean in intrinsic value, now? *A.* Yes.

Q. And is there any other that is superior or equal to theirs in public estimation or reputation? *A.* No, sir.

Q. Did you hear of the organization of the defendant company some months ago?

A. Yes, sir; you mean the Trenton Company?

Q. A year ago, more or less? *A.* Yes.

Q. Before they began work were there any goods of this kind upon the market anywhere known as or called "Eureka" goods? *A.* I never heard of them. 10

Q. In all your business life you haven't heard of it?

A. No, sir.

Q. Are these rubber tubes that you furnish to them complete when furnished, or is something else in the way of vulcanizing or cementing, or in some other way, necessary to be done to complete them, and to complete the fire hose?

A. They are complete so far as form of tube is concerned, but they are not fully vulcanized. 20

Q. What is this process that is called "vulcanizing"; that is, does it work a chemical change—just explain?

A. Yes; it changes the chemical nature of the article, the same as the baking of a loaf of bread changes it from flour. We take the crude rubber, or the mixed product that goes into these tubes, and it can be elongated without returning to its normal condition, or it is affected by heat or cold very quickly in a semi-vulcanized state; it is subject to such changes in a lesser degree, and when it is finally vulcanized, and thoroughly vulcanized, it returns to its proper condition, and is not affected materially by cold in winter or hot weather in summer. 30

Q. That is what vulcanizing does for it? *A.* Yes.

Q. I am told that you make for the complainant company a rubber hose, of which Sample 3 here is a sample?

A. Yes, sir; that is right.

Q. Is this made on the complainant's specification?

A. Yes, sir.

Q. And according to their formula?

A. According to their formula.

Q. And on their order? *A.* Yes.

Q. And what quality of rubber is used in the manufacture of these? *A.* Highest grades.

Q. And the other materials, there is some duck in it?

A. Special grade of duck, made especially for this purpose.

10 *Q.* And according to complainant's specifications?

A. Yes.

Q. And on their order? *A.* On their order.

Q. Under their supervision? *A.* Yes.

Q. The whole thing? *A.* Yes.

Q. And is it tested? *A.* Tested by them.

Q. Before its acceptance? *A.* Yes.

Cross-examination by Judge Lanning:

20 *Q.* Don't you use the duck that is found in Sample 3 for other parties?

A. I don't recall the number; is that the one you just referred to?

Q. Yes. *A.* Yes, sir; we do.

Q. It is not used exclusively, then, for the Eureka Fire Hose Company? *A.* No, sir.

Q. Don't you use the same materials that enter into the composition of Sample 3 for other parties?

A. For our own trade; yes.

30 *Q.* Don't you furnish to other parties for your own trade rubber hose precisely like Sample 3? *A.* Yes.

Q. That is not furnished to the Eureka Fire Hose Company alone, then? *A.* No, sir.

Q. It is one of your customary and usual products, is it not? *A.* It is a high-grade product.

Q. You spoke of two different grades of rubber tubing, or rubber lining, that you made. Do you know what brands of the complainant's cotton hose those two different kinds of tubing are used? *A.* Yes.

Q. What kinds?

A. The better grade goes in the fire hose; the lower grade goes in their mill and garden hose.

Q. What you call, then, the better grade enters into all of their fire hose?

A. No, sir; they have two grades of fire hose.

Q. Do you know their grades of fire hose by their names? A. Very familiar with them.

Q. In which of them does the better grade of tubing enter?

A. "Eureka" and "Paragon" and "Red Cross" always, and sometimes the others. 10

Q. Have you frequently seen the hose of the complainant company as it is ready for the market?

A. I have.

Q. Have you found it stamped with the name of the company, "Eureka Fire Hose Co."? A. Yes.

Q. "Paragon," have you ever seen that used without the name "Eureka" and other words associated with it?

A. Don't recollect it.

Q. Have you ever seen the word "Eureka" used, except in connection with the name of the company, full name of the company? A. I don't think so. 20

Q. You have never seen the word "Paragon" stamped upon any of its products alone, without being associated with other words? A. Don't recall it.

Q. You have never seen "Red Cross" so used?

A. No, sir.

Q. Without other words? A. I think not.

Q. You know, of course, the location of the Eureka Fire Hose Company's factory? A. I do. 30

Q. Where is it? A. By street you mean?

Q. No; what city? A. Jersey City.

Q. Been there for years? A. Yes, sir.

Q. You would not mistake, I suppose, the name Eureka Rubber Manufacturing Company for Eureka Fire Hose Company?

A. Having been familiar with it for so many years, I don't think I should.

Q. And, of course, if associated with the name of "Eureka Rubber Manufacturing Company," were the words "Trenton, New Jersey," that would make it quite clear that you couldn't mistake it for the Eureka Fire Hose Company?

A. No, sir; I never saw any connection between the Eureka Fire Hose Company and Trenton.

10 *Q.* In other words, you wouldn't be confused as to the use of the two names at all?

A. I think I am familiar enough with it myself, sir, not to be deceived.

Q. Your company does not engage at all in the business of manufacturing jackets, do you?

A. We don't weave.

Q. Is your business limited to the manufacture of rubber hose?

A. Rubber hose, no, sir; we make a general line.

20 *Q.* I didn't mean rubber hose; I mean, is your business limited to the manufacture of rubber goods?

A. Yes, sir.

Q. Which includes rubber hose and what else?

A. Belting, packing, valves and matting.

Q. What are known as mechanical goods?

A. Mechanical goods.

Q. The New Jersey Car Spring Company is still in existence? *A.* Yes.

Q. And are you still an officer of it? *A.* No, sir.

30 *Q.* You were formerly? *A.* I was.

Q. When you were there for some 28 years, I think, associated with that company, did that company purchase from the Eureka Fire Hose Company cotton jackets? *A.* It did.

Q. And use them in its business? *A.* Yes.

Q. And sold to the Eureka Fire Hose Company the rubber tubings? *A.* Yes.

Q. The company that you are now connected with, the Voorhees Rubber Manufacturing Company, does that take from the Eureka Fire Hose Company cotton jackets? *A.* Yes, sir.

Q. As well as sells rubber tubing, as you have already testified? *A.* Yes.

Q. The New Jersey Car Spring Company would make what use of the cotton jackets purchased from the Eureka Fire Hose Company?

A. Line them and sell them. 10

Q. Stamp them, or not? *A.* Yes, sir.

Q. Stamp them how, as "Eureka" goods?

A. Certainly not.

Q. Stamp them with their own name? *A.* Yes.

Q. Make them just like the "Eureka" goods?

A. No, sir; I don't know that that is true.

Q. You have the cotton jackets? *A.* Yes.

Q. That you purchased from the Eureka Fire Hose Company? *A.* Yes.

Q. Did you insert into them rubber tubings of the 20 first or second grades that you have testified about?

A. Yes.

Q. Put them through the same sort of vulcanizing process? *A.* Yes.

Q. And stamp them with the name of the New Jersey Car Spring Company? *A.* Yes.

Q. Have any other brand upon them? *A.* Yes.

Q. And your present company, the Voorhees Rubber Manufacturing Company, I suppose, inserts in the jackets that it purchases from the Eureka Fire Hose Com- 30 pany rubber tubings of their own manufacture?

A. We do.

Q. You put them through the vulcanizing process?

A. We do.

Q. And then you stamp them with your name?

A. We do.

Q. And put them upon the market as such? *A.* Yes.

Q. So that, so far as you know, the goods put upon the market by the New Jersey Car Spring Company and yourselves are the same kind of goods that the Eureka puts upon the market?

A. I don't know about what they are doing.

Q. That is, "I don't know what the New Jersey Car Spring Company are doing," is that the answer?

A. Yes.

Q. Now, Mr. Voorhees, up to the time that you left
 10 the New Jersey Car Spring Company, was the cotton rubber-lined hose which that company put upon the market, so far as you know, made like that that the Eureka Fire Hose Company put upon the market?

A. In some cases, possibly, but in generality, all cases, no.

Q. As to the cotton rubber-lined hose that the Voorhees Rubber Manufacturing Company has been and is putting on the market, is that, so far as you know, made in the same way as the cotton rubber-lined hose that the
 20 Eureka Fire Hose Company is putting on the market?

A. You mean absolutely the same brand, and so forth? I know in some cases that it is not.

Q. And in some cases is it the same?

A. In some cases it may be, I am not sure.

Q. The process of completing it, making it, is the same, so far as you know?

A. The finishing process of lining?

Q. Yes. *A.* Yes, the same.

Q. There seems to be a little question as to what your
 30 answer was concerning the hose put on the market by the New Jersey Spring Company, therefore, I will ask you again, whether, up to the time you left that company, which was about five years ago? *A.* Yes.

Q. That company purchased its jackets, cotton jackets, from the Eureka Fire Hose Company?

A. You mean exclusively?

Q. Well, whether it purchased jackets?

A. Yes, it did.

Q. And whether that company inserted in those jackets rubber tubing and vulcanized them and prepared them for the market? *A.* That is true, yes.

Q. And whether the hose thus made and put upon the market was, so far as you know, made in the same way as the Eureka Fire Hose Company was making and putting cotton rubber-lined hose on the market?

A. I thought I answered that; in some cases I knew it was not; in some cases it may have been.

10

Re-direct examination by Mr. Lindabury:

Q. Mr. Voorhees, I understand that for some time you have been making hose substantially like some of the fire hose made and sold by the complainant?

A. You mean the so-called rubber hose?

Q. (Question repeated) "I understand that for some time you have been making hose substantially like some of the fire hose made and sold by the complainant"—cotton rubber-lined hose? *A.* Yes.

Q. How long have you been doing that?

20

A. Well, at different times since we began business.

Q. That is, at different times during the last five years?

A. And in making that hose, or for the purpose of making it, you got the jackets, I understand, from the complainant? *A.* Yes.

Q. Unbranded? *A.* Yes.

Q. And have put in the rubber linings and vulcanized them, and finished them up under substantially the same process as that used by the complainant? *A.* Yes.

Q. And did you brand them before offering them for sale? *A.* Yes.

30

Q. With what name? *A.* Our own name.

Q. Did they sell as readily as the same goods with the name "Eureka" on them?

A. Unfortunately, I think not.

Q. Why "unfortunately"?

A. Because we cannot get as much for goods under our name as they can for the same goods under their own.

Q. And has that been so since you began to put out the goods? *A.* Yes.

Q. You never, however, have put the name "Eureka" on, have you? *A.* No, sir.

George M. Eckert sworn for complainant.

10 *Direct examination by Mr. Lindabury.*

Q. Mr. Eckert, where do you live?

A. Town of Kearney.

Q. Have you any connection with the municipal government of that town?

A. I have; I am one of the town councilmen.

Q. Have you a fire department?

A. We do; have a volunteer fire department.

Q. And have had occasion to buy fire hose?

A. We have occasionally, yes.

20 *Q.* Do you remember advertising for hose some months ago? *A.* I do.

Q. When was it?

A. We advertised in August for 2,000 feet of double jacketed rubber-lined cotton hose; the bids were to be opened on August 12th.

Q. How did you advertise?

A. Through our local papers and through the different trade papers, such as "Fire and Water," and so forth.

30 *Q.* By specifications, or was the specification as you have now given it? *A.* Just as I have given it.

Q. Did you receive bids?

A. We did, from several concerns, quite a number.

Q. I show you a letter, dated August 11, 1903, signed "Eureka Rubber Manufacturing Company, Brewster, Manager"; did you receive that in answer to your advertisement.

Q. When, with reference to its date?

A. August 12th was the date we received it.

Q. How many did you receive in all?

A. I don't just remember how many; I think we received seven or eight bids.

Q. Did you receive any from the Eureka Fire Hose Company, the complainant company?

A. The Eureka Fire Hose Company, yes, sir, we did.

Q. Do you happen to have their bid with you?

A. No, sir, I have not.

Q. Did you have anything to do with the opening of 10
the bids? *A.* I did.

Q. What?

A. The bids were opened by the clerk first and read off in the council, and then referred to the chairman of the Fire Committee; I was chairman of the Fire Committee; the bids were taken up in the ante-room and discussed there by the Committee of the Whole, the chairman of the Fire Committee being chairman, and we found it necessary to call attention to the Eureka Fire Hose Company, to two bids, not knowing—it afterwards developed—(interrupted)— 20

Judge Lanning—I don't know the object of this and I don't see the relevancy of going into what took place at that meeting.

Q. You received two bids, did you?

A. We did; received more than two.

Q. As you understood, the same company? *A.* Yes.

Q. And what company was that?

A. Supposed to be the Eureka Fire Hose Company; at least I understood it that way. 30

Judge Lanning—What was it, what did it purport to be?

Q. Was one of them or not contained in the letter which I showed you, under date of August 11?

A. Yes, sir.

Q. That is before you? *A.* Yes.

Q. When did you discover, if you ever did discover, and how, that that was not in fact from the complainant company?

A. By calling in the representative of the Eureka Fire Hose Company.

Q. And how were you then able to determine—
(interrupted)—

Judge Lanning—I object; you are going into the contents of papers.

The Court—You may put this one in.

Q. When did you discover that this bid under date of August 11, 1903, signed by the Eureka Rubber
10 Manufacturing Company was not in fact the bid of the complainant company, and how did you discover it?

A. Well, we had two bids there that were apparently the Eureka Fire Hose Company, at least we understood it that way, and I called in the representative of the Eureka Fire Hose Company, not knowing that there was any other company in existence under that name.

Q. Under what name?

A. The Eureka Fire Hose Company. I had had
20 dealings before with the Eureka Fire Hose Company, and knew them by reputation, and had never heard of another company of similar name, consequently I asked for the representative of the Eureka Fire Hose Company to come in and explain why he had put in two bids, and that is how it came to light.

Q. And did you then learn that one of the two supposed bids was not his? *A.* Yes.

Q. And that is the one that is before you now?

A. Yes.

Q. How many of your council were together then?

30 *A.* Nine.

Q. And did you examine these bids before you called this man in, I mean, examine them in open council, the whole nine, or just the committee?

A. Just the committee.

Q. Who was on the committee, anyone beside yourself? *A.* Yes.

Q. Who? *A.* Two other aldermen.

Q. And the mistake then was made not only by yourself, but by two others? *A.* Yes, sir.

Q. And were these bids examined carefully before you called in the representative of the Eureka Fire Hose Company? *A.* Yes.

Judge Lanning—Objected to; let him tell what he did.

Q. Had you noticed, before the representative of the Eureka Fire Hose Company came in, the name "Rubber Manufacturing Company of Trenton, New Jersey" on the letterhead of this Brewster bid?

A. No, sir; I had not; I hadn't noticed it. 10

Q. Had you noticed the difference in names that is actually shown by reading the letterhead?

A. No, sir; I had not.

Cross-examination by Judge Lanning:

Q. Where is the bid that you say was made by the Eureka Fire Hose Company?

A. The bid was handed in afterwards to the town clerk; I presume it is in his custody.

Q. Why didn't you bring it with you? 20

A. I wasn't requested to bring any bids here.

Q. Did you bring this? *A.* No, sir; I did not.

Q. To whom did you give it?

A. To whom did I give that?

Q. Yes.

A. I didn't give that to anybody; I cannot tell how it got out of our possession; I presume they got it from the town clerk; he is the custodian of all official papers.

Q. You say you got it from the Eureka Fire Hose Company? *A.* Yes. 30

Q. Do you know what date it was?

A. I don't recall the date.

Q. Was it opened at the same time that this bid from the Eureka Rubber Manufacturing Company was opened? *A.* It was.

Q. Will you produce the bid of the Eureka Fire Hose Company at a later day? *A.* I cannot say that I can.

Q. Will you look for it? *A.* I will.

Q. And if you find it, produce it? *A.* I will.

Q. Do you know what name was signed to the bid that you say was produced by the Eureka Fire Hose Company? *A.* I do not.

Q. And did you examine the signature to find out?

A. I did not.

Q. Did you examine the signature to this paper, to which your attention has just been called?

A. No, sir; I did not.

10 *Q.* You didn't look at the signature to it?

A. No, sir.

Q. Did you look at the signature to it? *A.* No, sir.

Q. How, then, did you know from whom the bids were received?

A. Well, the letterhead distinctly says from whom the bids were received, from all the different concerns; in fact, an officer of a company signs a bid, and we don't particularly care much which officer signs it or how he signs the bid as long as it comes on a paper.

20 *Q.* Did you then look at the letterheads in each case?

A. We did.

Q. How many bids were there?

A. About seven or eight is my recollection.

Q. And in order to ascertain from whom these bids came you in each case examined the letterhead, did you?

A. Yes.

Q. And nothing else?

A. We looked particularly at the price; of course, we looked at the letterhead.

30 *Q.* Did you examine anything except the letterhead and the price?

A. No, sir; we didn't examine the signatures.

Q. You didn't in any case look at the signature?

A. No, sir.

Q. And you assumed that the bids came from the names of the parties appearing in the letterhead, is that correct?

A. Well, now, you see I didn't examine the signatures, of course; wait a minute; you are getting the thing confused. When it comes to the signatures, of course, we naturally would look at the signature. For instance, if it says "Eureka Fire Hose Co.," we might naturally look at the signature; of course we would, but I don't recollect just what signatures were on all these bids.

Q. But my question was, did you examine the signatures? 10

A. We looked at the signatures, of course, but I cannot tell you just what signatures were on these bids.

Q. So you were mistaken awhile ago when you said you did not examine the signatures?

A. When you asked—of course, if you read a bid, you naturally do look at a signature.

Q. I asked you if you were mistaken awhile ago, when you said you did not examine the signatures?

A. Only in a casual way.

Q. Did you examine the letterheads carefully? 20

A. I don't suppose we examined them right into the minutest detail.

Q. Did you examine this particular bid that has been handed you with sufficient care to notice that the letterhead describes it as "The Eureka Rubber Manufacturing Company of Trenton, New Jersey"?

A. No, sir; I did not.

Q. Did you examine it with sufficient care to notice that the tri-colored figure on the letterhead contains these words, "Eureka Acme, Trenton, N. J."? 30

A. No, sir; I did not.

Q. Did you examine it sufficiently to observe that under the cut of the factory are the words "Factory and General Offices, Trenton, N. J."?

A. No, sir; I did not.

Q. Did you examine it with sufficient care to observe that the signature is "The Eureka Rubber Manufacturing Company, C. V. B. Brewster, Manager"?

A. No, sir; I did not.

Q. Do you know any of the officers of the Eureka Fire Hose Company?

A. I have met one of the officers of the Eureka Fire Hose Company.

Q. Who? *A.* Met Mr. Markey.

Q. What officer is he?

A. I don't know what office he holds.

Q. Do you know who the president of the company
10 is? *A.* I do not.

Q. Or the vice-president? *A.* I do not.

Q. Or the secretary? *A.* No, sir.

Re-direct examination by Mr. Lindabury:

Q. Had you heard of the "Eureka" goods before this, of the "Eureka Fire Hose" goods before this?

A. Yes, sir; I had.

Q. Had you used any of them before?

A. Yes; we have used some in our town.

20 *Q.* Did you happen to know whether the head office of the company that made those goods was in Trenton, or Jersey City, or where it was?

A. No, sir; I did not.

Q. And did you happen to know all the words that went to make up its corporate title? *A.* I did not.

Q. What was it you knew it by; what was there of the name that you knew?

A. Simply Eureka Fire Hose Company; that is all.

Q. Did you know they were making fire hose?

30 *A.* Yes, sir; that is, I understood it so.

Q. Did you know what its title was; what its corporate title was?

A. No; simply "Eureka Fire Hose Company; that is all I ever knew it by.

Q. Had you ever seen any of these letterheads before this, so far as you know? *A.* Yes; I have.

Q. You had seen them before? *A.* Yes.

Q. Do you know whether the Eureka Fire Hose Company submitted their bid on a letterhead, or did they submit it on a regular proposal, without any letterhead?

A. My recollection of it was that it was on a letterhead.

Q. That is your recollection of it? A. Yes.

Q. Are you confident about it, or uncertain?

A. I am pretty certain it was on a letterhead.

Q. I suppose it is on file somewhere?

A. All special documents are in the custody of the town clerk, and supposed to be there, and if it is on file he has it. 10

Q. Weren't there samples of hose submitted with each of these bids? A. There were.

Q. And are they there yet, procurable?

A. I hardly think so.

Q. What do you think has become of them?

A. They have probably been thrown out.

Q. Do you know whether the sample presented by the defendant company had any mark or stamp or name on it? 20

Judge Lanning—Objected to, because there has been no search made for it.

The Court—It may have been kept; if it is, the town clerk can look for it.

Q. What was there on the proposal of this defendant company, what word or words that led you to suppose that the bid was the bid of the complainant company?

A. "Eureka."

Judge Lanning—Who is the town clerk? 30

Witness—Theodore Wildman.

Mr. Lindabury—I offer this letter of the defendant company of August 11, 1903, to the Town of Kearny, in evidence.

(Marked *Exhibit C 33*.)

Judge Lanning—Will you produce the other one?

Mr. Lindabury—We will issue a subpoena for it.

Q. Do you remember when the representative of the complainant company was called in, whether any exhibition of the samples was made, and how and by whom?

A. Yes, sir.

Q. By you? A. Yes, sir.

Q. In what way, do you remember?

A. I handed them to him and asked him which one
10 of the samples were his.

Q. Could he pick out his own from the two samples; was he able to identify the sample of his company?

Judge Lanning—Objected to.

Q. Did he identify it?

Objected to. Objection sustained.

Q. Was there any difference in them, by which you could distinguish one from the other?

A. Not as I recollected; no, sir.

20 Re-cross examination by Judge Lanning:

Q. Was there any difference by which you could distinguish the Eureka Fire Hose Company sample from any of the other seven or eight samples exhibited?

A. Yes.

Q. What? A. All had their brands on them.

Q. Did the Eureka Fire Hose Company have its brand on? A. Yes.

Q. Did the Eureka Rubber Manufacturing Company have its brand? A. Well, I cannot say positively.

30 Re-direct by Mr. Lindabury:

Q. Did they both have the words "Eureka" on?

A. I don't remember that.

George A. Wies, recalled for complainants.

Direct examination by Judge Collins:

Q. Mr. Wies, tell us the volume of business of your company since you knew anything about it, of the companies now represented by the complainant since you have known about it, and how it has increased.

A. Can I refer to a memorandum and refresh my memory? I have taken a record of our books since 1876, since they were in business?

Q. Yes.

A. In 1876, \$70,500, that was the annual volume of business; 1880, \$128,500; I have taken this every five years, as an average; 1885, \$270,150; 1890, \$404,000; 1895, \$522,000; 1899, \$709,000, I took four years there; 1900, \$766,000; 1903, to date, \$860,000, about.

Q. Can you tell us the cities or towns in this country to which you supply fire hose and how much? 10

A. I don't believe there is a city of 100,000 population in the United States that doesn't use "Eureka hose."

Q. I have seen a card, in which it gives a list of the cities. *A.* Yes.

Q. Can you tell us, then, the names of the chief cities and the amount of fire hose you sold to them? Use that card, if you compiled it yourself.

A. That card is compiled from our books and is absolutely correct. 20

Judge Lanning—By whom?

Witness—By myself. Where we did not make the sales direct, we wrote our agents and got information as to where they had sold. For instance, Detroit, H. D. Edwards & Co. are our agents at Detroit.

(Card produced.)

Judge Lanning—I understand that this card is a resume of data that have been given to the witness by different agents that the complainant company has in different parts of the United States. 30

Witness—The bulk of them are actual transactions and stand on our books.

Q. This card wasn't made for this case? *A.* No.

Q. It is an advertising card? *A.* Yes.

Q. Issued when? *A.* Every year.

Q. When was that issued? *A.* January 1st, 1903.

Q. Now, tell us from memory some of the chief cities and the amounts of fire hose sold to them, approximately. *A.* New York City, about 30,000 feet.

Q. In what time? *A.* In 1903.

The Court—He is speaking of annual sales.

Q. Go on.

A. Jersey City, 3,000 feet; Newark, 6,000 feet; Indianapolis, 2,500 feet.

Q. Philadelphia?

10 *A.* None sold there this year. Detroit, 6,000 feet; Buffalo, 7,000 feet; San Francisco, 2,000 feet; Los Angeles, 2,500 feet; Salt Lake City, 1,000 feet; Chicago, 6,000 feet; Toledo, Ohio, 2,000 feet; Allentown, Pa., 2,000 feet; Terre Haute, Ind., 1,000 feet; United States Navy Department, several thousand feet; Army Department, several thousand feet; I cannot tell offhand; I don't recall any more.

Q. Those are all this year? *A.* All this year.

Q. 1903? *A.* Yes.

20 *Q.* Now, Philadelphia, you sold none this year, but did you last year?

A. No, sir; we haven't sold Philadelphia any hose in the last three or four years, but prior to that we sold large quantities.

Q. And how many cities and towns have you sold altogether?

A. I should say offhand we have 250 accounts on our books against cities and towns.

Q. And what have been your average annual sales, all combined, for fire purposes?

30 *A.* I have given it to you in dollars; I never took it in number of feet.

Q. (By the Court)—He is asking you now as to fire hose. *A.* I should say about sixty per cent.

Q. Do I understand you that the sales of fire hose make up about sixty per cent. of the total sales?

A. Yes, of the entire business.

Q. (By Judge Collins)—How is your company known; what distinctive word as designating your company and its predecessor, the New York corporation?

A. We are known in the trade almost entirely as the "Eureka Company."

Q. Do letters come to you not in exact corporate title? A. Frequently.

Q. How long has that been the case?

A. Since the incorporation of the company in '75.

Q. What are they, or some of them?

10

Judge Lanning—Objected to.

Judge Collins—I will produce them.

The Court—You have here some of those, being addressed with an incomplete designation?

Witness—Yes.

Judge Collins—What I wanted to get at was whether the word "Rubber" had anything to do with it.

The Court—That would be an answer subject to correction by the papers.

20

Q. (By Judge Collins)—There is a lot selected by you and tabulated and put together. (Witness shown letters.)

A. Yes, sir; they were personally got out of our files by myself.

Q. They don't represent the whole correspondence?

A. No, sir.

Q. Merely those that are misdirected in some way?

A. Yes.

Q. Now, read them.

30

The Court—Are these classified?

Witness—Yes.

Q. (By Mr. Lindabury)—And do they represent the whole of the misdirected ones?

Q. Only in these particular years that they are picked from.

The Court—And during what year?

Witness—1896. Thirteen addressed "Eureka" in '96.

Q. Have you them for one year only? *A.* No.

Q. How many years have you?

A. I took '76 and then every five years right through.

Q. And you have all the misdirected ones?

The Court—When you say you took the misdirected letters of the year 1876, and then every five years, you mean one year out of every five?

Witness—Yes.

Q. (By Judge Collins)—And the intervening ones
10 you did not?

A. You would have needed a dray to bring them here.

The Court—Tell what you did.

Q. Were there misdirected ones in the other years?

A. I am confident there are a great many.

The Court—Begin chronologically.

Q. You selected the ones in '76? *A.* Yes.

Q. And then every five years thereafter? *A.* Yes.

The Court—Just pass over this for the present.

20 Judge Collins—Pass that, then, for the present.

I will now come to another subject.

Q. I come now to the letters that have been received by your company since the incorporation of the defendant company, that are either misdirected to you, were intended for you, or misdirected to you, but intended for the defendant, and forwarded to them, or had been first sent to the defendant and by them discovered to be intended for you, and then sent to your company, and I ask you if this is a batch of that general character, and
30 to describe them. (Witness shown letters.)

Judge Lanning—Objected to.

The Court—I think that question is objectionable. Ask him as to the character of letters received by him.

Q. Now, take that batch of letters that you have sorted and arranged and have before you, and take them up in order, as they are, and describe each one so the court can see.

A. The first is a letter and envelope of Pierce, Butler & Pierce Mfg. Co., Syracuse, N. Y., addressed, "Eureka Rubber Mfg. Co., 13 Barclay St., New York City," and it is marked "1330," which is our post-office box number.

Q. Is that your street number?

A. Yes, and Pierce are customers of ours.

Q. And did the letter refer to business of yours with them? *A.* It evidently did not.

Q. What is the number of the New York office of the defendant?

A. I think it is 55 Warren street; I am not positive of that. 10

Q. Have they an office in New York City?

A. I believe they have; I have never been to the office.

The Court—You say that letter does not refer to any business of yours?

Witness—No, sir.

Q. But it is addressed by the defendant's name, to your place of business? *A.* Yes. 20

Q. And it came to you? *A.* Yes, and I wrote them.

Q. Who put on the number of the box?

A. I imagine the post-office clerk, I don't know.

Q. It is in lead pencil, is it? *A.* Yes.

Q. It came to you with that on?

A. All our letters are marked in that way, with the post-office box in pencil.

Q. And that came to you with that on? *A.* Yes.

Q. The next one is what?

A. One of our own envelopes, stamped, which we got from the Goodyear Rubber Company, 787 Broadway; it contained an order addressed to "Eureka Rubber Mfg. Co., Trenton, N. J., for some—I called Mr. Kipp, the manager of the Goodyear Rubber Company, up on the telephone and told him— 30

Judge Collins—Never mind that.

Q. You found it was intended for the other company?

A. Yes, but I notified him that I had the order.

Q. Did you find out it was intended for the other company?

A. I found it was intended for the Eureka Rubber Manufacturing Company.

Q. It is addressed to them inside?

A. Yes, but I told Mr. Kipp that I wanted to keep it.

Q. Keep the letter? *A.* Yes.

Q. And you obtained his permission to keep the letter for evidence?

10 *A.* Yes, I did that. Then we have a notice from the Goodyear Rubber Company, dated March 5, 1903, which came in the same kind of an envelope, one of our own envelopes, it refers to "Eureka Rubber Mfg. Co., Trenton, N. J.," about an order No. 30,130.

Q. When you say your own envelope, you mean a printed envelope?

A. We give them these envelopes, with the name already stamped on, and with postage stamps on.

20 *Q.* Was that sent in one of your envelopes to you, an order addressed inside, "Eureka Rubber Mfg. Co.," and intended for them? *A.* Yes.

Q. The next one we have is what?

A. An envelope of "Penn Rubber Company," mailed in Philadelphia on March 4, 1903, 8 P. M.; it is addressed in typewriter, "Eureka Supply Hose Co., New York," and then in red ink, the word, "Fire" and "13 Barclay," inserted in writing, and notice of the New York post-office, "No. 2, Not in directory." "Correct address supplied by New York P. O. after inquiry of sender,"

30 in a rubber stamp.

The Court—That last envelope you referred to, had on it with a stamp the name of the sender?

Witness—"Penn Rubber Company, Arch St., Philadelphia."

Q. It came to you stamped with the post-office stamp, that they had inquired of them and sent it then to you?

A. Yes.

Q. And it contained what?

A. Contained an inquiry for a good quality of steam hose with marline woven, and 50-foot lengths. We do that kind of work. Then we have a telegram, Western Union, "Springfield, Mass., Apl. 7, 1903," addressed "I. B. Markey, Eureka Hose Mfg. Co., 13 Barclay St., New York," asking for a sample of hose to be sent by express at once.

Q. Is Mr. Markey your secretary?

A. Yes; sample was sent. 10

Q. From whom is the next?

A. That telegram was signed "A. P. Leshure."

Q. Is there any company known as the "Eureka Hose Manufacturing Company"?

A. Not that I know of. Then next, we have order, March 19, 1903, No. 670, Nason Manufacturing Co., Beekman street, New York, for 3-ply water hose, addressed, "Eureka," "Reade St." erased and "13 Barclay street" put in afterwards, and we telephoned this house, and they said that they had made an error in sending the order, it was meant for another concern. 20

Q. (By Mr. Lindabury)—Do you know where the defendant's office formerly was in New York?

A. It was in Reade street; I saw the sign. Then the next is an order, March 19, 1903, the same date and the same concern, Nason Manufacturing Co., No. 696; they both came at the same time by a messenger boy.

Q. What is this addressed to?

A. "Eureka Rubber Mfg. Co., 13 Barclay."

Q. (By Judge Collins)—Which is your number. 30

A. Yes.

Q. Was it that way when you got it?

A. Yes, and we telephoned the Nason Manufacturing Co. The next we have is an envelope of the "Southern Pacific Co.," of New York; it was addressed, "Eureka Fire Hose Co., Trenton, N. J.," it was opened by mistake, not intended for us, and there is an endorsement there marked "Not Trenton Rub. Co."

Q. And that you got by mail?

A. Yes; it was a receipted bill for freight we sent a check for.

Q. It was sent by the payer, the Eureka Fire Hose Company, Trenton?

A. Yes. Next we have an envelope from Mr. W. J. Kingsland, 35 South William street, New York, mailed November 20th, addressed "Eureka Fire Hose Co., Reade Street, City," and it is marked "Opened by mistake Eureka Rubber Mfg. Co., per Strong," and then, in pencil, there is put in "Barclay street," in place of "Reade street," in pencil, and our post office number. This contained a request to ship some goods on a foreign vessel which we had to deliver on the dock.

Q. It was your office?

A. Yes. Next we have an envelope from the "James W. Byrnes Belting & Hose Company, Saint Louis," mailed November 19th, addressed, "Eureka Fire Hose Co., New York, N. Y." It was sent to us opened and sealed with this seal (indicated).

Q. Is there anything to show who opened it? *A.* No.

Q. Is this red-rimmed paster put on by the post office people?

A. No, sir; they stamp it with an official stamp.

Q. But someone had pasted this red-rimmed paster on it; it came to you that way? *A.* Yes.

Judge Lanning—How do you know?

Witness—I received these instructions; I had instructions; it was enclosed in this envelope (indicating), I believe, "Opened by mistake."

Q. Do you know when that came to you whether it had anything in it?

A. It had an order which was intended for us and which we executed. Next we have one of the Old Dominion Steamship Company, New York, September 17, addressed "Eureka Fire Hose Co., 56 Reade St., City," and "Barclay Street" inserted in pencil, and endorsed "Opened by mistake, R. H. Strong, Eureka Rubber M.

Co.," and stamped by the New York post office and sealed by it, as being received in bad order.

The Court—That was a letter for you; that was then returned to you in that condition?

Witness—Yes. The next is a postal card, mailed January—I cannot tell the date—1903, addressed "Eureka Fire Hose Co., 56 Reade St., N. Y. City"; it was intended for us, with "R. & P.," that is for foreign shipments, in a diamond, "East London." 10

Q. That belonged to you, addressed to their business address?

A. Yes. Next we have a letter of G. K. Sheridan & Company, mailed January 16, addressed "The Eureka Fire Hose Company, Trenton, New Jersey," "Trenton, New Jersey," marked out and stamped "forwarded," and red ink "12 Barclay Street, New York, N. Y." We wrote them about it; the subject matter of the letter wasn't intelligible, and we wrote them and they replied on January 20th, that the letter was intended and should have been sent to the "Eureka Rubber M'f'g Co., Trenton, New Jersey." 20

Q. The letter wasn't for you?

A. No. Next is a letterhead of our own address, "Eureka Rubber Co., 56 Reade St., City," in which we enclose them a letter delivered in our post office box 1330, "this morning," copy of a letter; I wrote them and sent it up by messenger. We have an invoice of "The Allen Fire Dept. Supply Co.," December 8, 1902, crediting us \$16, which should have been charged to The Eureka Rubber Manufacturing Company. 30

Q. They sent you a bill, including \$16 too much, and sent you a credit slip?

A. We purchased goods from these people. This is their letterhead, in which they state it was an error on their part. We have a plain envelope, mailed at Yonkers, New York, October 16, 1902, addressed "Eureka Fire Hose Co., 13 Barclay St., New York, N. Y. (Man-

ager's office)," and the letter it contained was addressed "Eureka Rubber Mfg. Co., Trenton, New Jersey," some one applying for a position as chief engineer. The next is a letter from our agents in Philadelphia, enclosing correspondence of George P. Thomas, Jr., our agents, James Boyd & Brother.

Q. Did you receive it?

A. Mr. Boyd received it. The first letter is George P. Thomas, Jr., of Baltimore, May 11th: "Kindly name us price of 'Eureka $\frac{3}{4}$, 3-ply hose,' also on 1-inch 4-ply 'Eureka steam hose.'" Next is a plain envelope, mailed June 21, 1903, addressed "Eureka Company, 23 Duane St., New York." "The writer respectfully applies for above position, provided, if satisfactory, position be permanent." We did advertise for an office boy at that time, in the New York Herald.

Q. But you had no office at Duane street?

A. I don't believe it is in response to our advertisement, either.

10 *Q.* It was delivered to you?

A. Yes. Then there is a letter of "A. Schrader's Sons," September 17, 1903, addressed "The Eureka Fire Hose Co., Trenton, N. J." The envelope was properly addressed; it was samples and intended for us.

Q. It came to you right, but inside it was "Trenton"?

A. "Trenton," yes.

Q. The next is what?

30 *A.* A letter of "R. Greenwood & Bault, Frankford, Pa.," November 12, 1903, addressed to "Eureka Fire Hose Co., Jersey City, N. J.," advising us that one bale of yarn was shipped to us in error; it should have been sent to the "Eureka Rubber Manufacturing Co., of Trenton, N. J." "We have notified the Railroad Company, and trust the bale will be intercepted before it reaches you."

Q. Was it?

A. I don't know. We have an envelope mailed in Newark, June 8, 1903, addressed "Eureka Rubber Co.,

Jersey City, N. J.”; it contained a statement, and on June 10th Walsh’s Sons & Co. wrote that it was an error and the statement was intended for the “Eureka Rubber Co.”

Q. The statement was also “Eureka Rubber Co.”?

A. Yes, but we do business with them; we have for years; next is an envelope mailed in Trenton, New Jersey, April 2, 1903, addressed “Eureka Rubber Mfg. Co., 13 Barclay St., New York City,” was endorsed by my direction, by our cashier, my brother, “Apr 3, 1903 10 This letter contained United & Globe Rubber Mfg. Co.’s check No. 9473, \$8.76 on First National Bank Trenton N J Eureka Fire Hose Company. William F. Wies.”

Q. It paid a bill of yours?

A. Yes; it was a voucher which we had to return.

Q. The voucher was made out right? *A.* Yes.

Q. But the letter containing it was addressed “Eureka Rubber Mfg. Co.,” at your address, New York?

A. Yes. Next is a postal card received at New York, May 22d, addressed “Eureka Fire Hose Company, 13 20 Barclay street, New York City,” “Kindly quote us by return mail lowest prices on 100 feet of $\frac{3}{4}$ Eureka Rubber Hose,” and so forth.

Q. Next?

A. Envelope of J. W. Buckley Rubber Co., New York City, mailed September 23, and addressed “Eureka Fire Hose Co., 55 Reade St., City”; it contained two invoices, one for “Eureka Rubber Mfg. Co., 55 Reade St., City,” and one for us, addressed “Eureka Fire Hose Co., 55 Reade St., City”; we sold the 43 feet of hose to 30 Buckley.

Q. Duplicate invoices?

A. Yes, duplicate invoices; one of the “Eureka Fire Hose Company,” and one of the “Eureka Rubber Manufacturing Company,” both 55 Reade street, and sent to “Eureka Fire Hose Co., 55 Reade St.”; we sold the material to Buckley and he sold it. Another one, New York, September 23, 1903, envelope is addressed, “The

Eureka Fire Hose Co., 56 Reade St., New York City," "56 Reade St." is erased, and "55 Warren" and our post office box, 1330, is written in in pencil. The envelope is from St. Regis Paper Co., Watertown, N. Y. It was intended for us; it was an inquiry for some goods. Then we have Boston Belting Co., Buffalo, New York, December 5, 1903, they ask for a quotation on fire hose, addressed "Eureka Rubber Mfg. Co., New York City." There are some letters here that will indicate the letter

10 was intended for the "Eureka Fire Hose Company."

Q. That is a copy you made of that, the letter I show you, and envelope addressed "Eureka Rubber Mfg. Co., Jersey City, N. J."?

A. This was a confidential report, received from either Bradstreet or Dun's Mercantile Agencies.

Q. That is a copy of a letter you had and of an envelope and contents, that you say belonged to the other people, and forwarded to them and kept a copy?

A. Either forwarded or returned to Bradstreet or

20 Dun.

Judge Lanning—I object to that.

The Court—I will withhold a ruling on that until to-morrow morning.

Adjourned to December 24, 1903, at 10:15 A. M.

Continuation of examination pursuant to adjournment taken to this 24th day of December, 1903, at 10:15

30 A. M., before Hon. John R. Emery, V. C., at Chancery Chambers, Newark, N. J.

Present—Counsel as before stated.

The Court—The complainant having given notice of application to amend the bill of complaint, the application is not opposed, and an order for amendment is made.

Judge Lanning—As to the trade marks, I wish to enter another objection. I object to the admission of

the Certificates of Registry of the trade marks, offered on Monday last, on the ground that the Federal statute authorizes the registry of trade marks only in cases where the trade is to be carried on with foreign nations or Indian tribes.

The Court—I will consider that objection is made, and will hear you on final hearing on its bearing on the case.

At the adjournment yesterday a copy of a letter and of an envelope received by the complainant, which was 10 forwarded by the witness, Mr. Wies, to the defendant, was offered, and I think Judge Lanning objected on the ground that he hadn't had any notice to produce that original letter.

Judge Lanning—Yes, sir.

Mr. Perkins—There was no notice given.

The Court—You haven't that?

Judge Lanning—I haven't looked for it, because I had had no notice to produce it.

The Court—I will rule for the present that that can- 20 not be admitted without further proof.

Mr. Lindabury—Will you accept notice now to produce it?

Judge Lanning—Yes.

April 4, 1904—*Reply of Defendants to Notice*: We have looked for such a letter and cannot find it, and have no recollection of having received it.

Court—Copy is admissible as secondary evidence.

James Boyd sworn for complainant.

30

Direct examination by Mr. Lindabury:

Q. Where do you live? A. I live at Haverford, Pa.

Q. What is your business?

A. Belting, packing and hose business.

Q. How long have you been in that business?

A. Twenty-one years.

Q. Where? A. In Philadelphia.

Q. Have you any connection with the complainant company—that is, the Eureka Fire Hose Company?

A. I have sold their goods for twenty-one years.

Q. As agent or independent dealer?

A. First as independent dealer, and for the last sixteen years I have represented them as an agent; that is, not selling on commission, understand, taking at stated prices and selling to whomsoever I pleased, but confining my purchases of goods of that class to the complainant, in consideration of the fact that they confine their sales in a specified territory to me.

10 *Q.* That is you have the exclusive right to sell in a particular territory? *A.* That is right.

Q. What territory?

A. In New Jersey, south of a line between Trenton and Sea Girt, and in the State of Delaware, and in Pennsylvania east of the mountains, the Alleghany mountains.

Q. Do you sell other rubber goods than theirs?

A. Yes.

Q. Do you sell all of their lines or only part?

20 *A.* I do; I sell all their hose, their belting, their steam hose, all of their manufactures.

Q. Have your sales of their goods been considerable or small? *A.* They have.

Q. And for how many years have the sales been considerable?

A. They have been considerably increasing for twenty-one years.

Q. Can you give us approximately the amount of sale of their goods per year during the last half dozen
30 years?

A. I don't know; I should judge somewhere perhaps eighty or ninety thousand dollars, possibly a hundred thousand dollars per year; of course, that is, as I say, has been increasing; it wasn't that at first.

Q. What of their products do you sell the most?

A. Sell more of their hose than anything else.

Q. Do you sell all the different brands of hose?

A. I do.

Q. Which do you sell the most of?

A. We sell more of the "Eureka" and also the "Eureka Mill"; I guess it is divided between those two.

Q. How do they stand among other hose as to quality?

A. You mean how do the "Eureka" goods stand?

Q. I meant those brands that you sell the most of, "Eureka" and "Mill Hose," whether they are the best of their products or second grade?

A. Most certainly they are the best; the "Eureka" is **10** their best heavy hose, and their "Eureka Mill" is their best mill hose; they have another brand that is made to conform to the underwriters.

Q. Do you meet in the market other goods made by other manufacturers of a similar character?

A. Oh, yes, indeed.

Q. That is, rubber-lined cotton hose? A. Yes.

Q. These two brands you speak of are rubber-lined cotton hose? A. They are.

Q. How many manufacturers in number, about, are **20** there of hose of a similar character to those two brands you spoke of, the "Mill Hose" and the "Eureka"?

A. Well, similar to the "Mill Hose" there are a great many.

Q. Give us an estimate.

A. When I say a great many—

Q. A dozen, or two dozen, or what?

A. I should judge a dozen or fifteen anyhow.

Q. And of the "Eureka"?

A. There is no concern that makes a hose exactly **30** like the "Eureka," solid woven multiple hose.

Q. What is the "Eureka" hose designed for; I mean that which you speak of as "Eureka"?

A. For fire department service almost exclusively.

Q. How do these goods sell in the market, as to readiness of sale or as to price, in comparison with the others you speak of of a similar character?

A. They command a higher price.

Q. And as to the extent of the sales?

A. The sales are very much larger.

Q. Than any other similar brand? *A.* Yes.

Q. That is what you mean? *A.* Yes.

Q. And how do you explain that?

A. Well, principally on account of the reputation which the "Eureka" goods have all over the country; they are known and there is a demand for them; there are a number of railroads that have adopted them as
10 standards and won't buy anything else, because they have been tested; they have proven by service to be more durable and stronger and better in every way.

Q. How are these goods, I mean the complainant's goods you are selling, known or spoken of in the trade, in the market? *A.* As "Eureka" goods.

Q. Aren't they known by any other name or words?

A. They have special brands to denote difference in weight and slight difference in structure; for instance, a two-ply brand is one and a single another.

20 *Q.* Is there any other word used to designate them by in the market or trade at all?

A. Most decidedly; we speak of them all as "Eureka" goods.

Q. Have you met in competition any of the defendant's goods since its organization or found any of them in the market? *A.* Yes.

Q. And have you had any inquiries for them?

A. Yes, indirectly.

Q. What has been your experience in regard to that?

30 *A.* Well, we have had dealers who have had inquiries from their customers for "Eureka Steam Hose," and supposed, of course, it was hose made by the Eureka Fire Hose Company.

Judge Lanning—Objected to.

The Court—For the "Eureka Steam Hose"?

Witness—Yes.

Q. Have you had inquiries for the defendant's products upon the idea that they were made by your company?

Judge Lanning—Objected to.

The Court—Tell what the inquiry was.

Q. Tell that.

A. A Baltimore concern, Thomas, corner of Charles and Baltimore streets, wrote us—

Judge Lanning—I think the letter ought to be produced.

Q. Have you the letter with you? A. I have not.

Judge Lanning—Objected to.

Mr. Lindabury—I have it.

10

Q. They wrote you under what date?

A. May 20, 1903.

Q. Now, had you had a previous communication from Mr. Thomas on that subject? A. Yes.

Q. Orally, or by letter? A. By letter.

Q. And had you answered that? A. We had.

Q. What was the date of your first communication from him? A. May 11, 1903.

Q. You have that here, have you? A. Yes.

Letter, May 11, 1903, offered in evidence and 20
marked *Exhibit C 34*.

Q. This letter is an inquiry for a price on "Eureka 3/4-inch 3-ply hose," also "1-inch 4-ply Eureka Steam Hose"; did you reply to that? A. We did.

Q. Have you a copy of your letter here?

A. I don't know whether that is here or not.

Q. Does the complainant make hose of that exact description; I mean does it make any hose that would be identified by you by such a description?

The Court—So far as you know of their busi- 30
ness.

Q. Do you have on sale for them hose that would answer to that exact description?

A. Not to the exact description.

Q. You sent a reply to that letter, which you have not here? A. Yes, sir.

Q. Did you receive an answer to your reply.

A. I think we did.

Q. And you have it here, have you not?

A. This is it (indicating).

Q. Letter of May 20, 1903, to which you have already alluded? A. Yes.

Letter of May 20, 1903, offered in evidence and marked *Exhibit C 35*.

Q. Does the correspondence end with this letter?

A. This is in regard to another inquiry from the same people, dated July 8th—

10 The Court—That was all about the first inquiry?

Witness—Yes.

Q. Did you make any reply to the letter of May 20th?

A. Yes; I know we did.

Q. But you have no copy of it here? A. No.

Q. Were you able to supply from the complainant's manufacture the goods that the letter of May 20th shows he wanted?

A. No; we were not, because we ascertained that he
20 wanted the defendant's goods, instead of the complainant's.

Judge Lanning—Objected to.

Q. (By the Court)—Did you have any further communication, from which you ascertained that, or does that appear from the letter?

Judge Lanning—It seems to me if these letters are admissible at all, we ought to have the whole correspondence.

The Court—It may be admissible, but the effect of it may be changed, unless the whole correspondence is put in.
30

Q. (By the Court)—Do you keep copies of your letters?

A. I have in my office.

The Court—It seems to me that the extent of the correspondence is the fact that this witness, who was the agent of the complainant, received from an intending purchaser an application, the

purchaser at the time stating: "I took it for granted that this was the Eureka Company." I will give you an opportunity to put in the entire correspondence.

Q. (By Mr. Lindabury)—You were not able to furnish the hose described in the letter of May 20th?

A. No.

Q. Did the complainant, so far as you know, make hose of the kind described in this letter of May 20th—plain rubber hose, not covered? 10

A. Not for steam, but for other purposes the complainant makes it.

Q. But this was for steam hose?

A. The complainant makes a Eureka steam hose, understand, which we supposed this party wanted.

Q. (By the Court)—That is covered?

A. It is a cotton hose with a rubber lining.

Q. (By Mr. Lindabury)—But it is not plain rubber?

A. No.

Q. But this letter calls for plain rubber hose and not covered; did the complainant make that kind of hose for steam? A. No. 20

Q. You received another letter on July 8th from the same party, did you not? A. Yes.

Letter of July 8th offered in evidence and marked *Exhibit C 36*.

Q. Did you answer that letter?

A. I presume so; it was answered from my office, anyhow.

Q. I show you another letter from Thomas to your firm, dated July 11, 1903; did you receive that by due course of mail? A. We did. 30

Letter of July 11, 1903, offered in evidence and marked *Exhibit C 37*.

Q. Does that end the correspondence? A. It does.

Q. Did you, after the receipt of this last letter, endeavor to ascertain who made hose described as the hose mentioned in the letter? A. We did.

Judge Lanning—Which letter?

Mr. Lindabury—Letter of July 11th and July 8th.

Judge Lanning—And known by what names?

Mr. Lindabury—"Eureka 4-ply steam hose."

Q. What did you ascertain about that?

The Court—Tell what came to your knowledge in the market in reference to that.

Witness—By inquiry amongst the trade we learned—(interrupted)

Judge Lanning—I don't think that is admissible.

The Court—Tell what inquiry you made.

Mr. Lindabury—And the result of it.

Witness—I cannot say from whom we obtained our information, but by other representatives of the different rubber companies calling upon us almost daily, and we asked those—it might have been from Mr. Whitehead, of Trenton, it might have been from—

20 Q. (By the Court)—Representatives of the rubber trade from different places, in the course of business, called at your house? A. That is right.

Q. And was it from one of them on so calling that you got the information? A. It was.

Q. Do you recall from whom you got it?

A. I cannot.

Q. (By Mr. Lindabury)—Now, what was the information you thus got?

30 Judge Lanning—Objected to. I don't see how the defendant can be bound by testimony of that sort.

The Court—It cannot be bound, but it is on the question of the time of the ascertainment of the source of the manufacture; it may be important on the question of relief.

Q. What information did you then receive from persons in the trade?

A. I learned that the hose was manufactured by the Eureka Rubber—or Eureka Rubber Manufacturing Company, I think it is, of Trenton.

Q. That there was a hose of this character manufactured by the Eureka Rubber Manufacturing Company of Trenton? *A.* That is it.

Q. And you had not heard of them before?

A. I had not.

Q. Can you tell about when that was?

A. This correspondence was in July; it must have been a month or so after, I presume. 10

Q. Have you in any other way come across any other of the defendant's goods in the market, or is that your only experience in that line?

A. I cannot remember another case.

Cross-examination by Judge Lanning.

Q. You spoke, Mr. Boyd, of the character of the hose made by the Eureka Fire Hose Company as being different from that made by other companies, I think, did you not? 20

A. The character of their two and three-ply hose is quite different; their single ply is quite similar.

Q. What about their two-ply hose?

A. The appearance, I am speaking of.

Q. Is there any two-ply hose made by them that is known by the name of "Eureka"?

A. Not by that brand alone.

Q. By what brand is it known?

A. Their two-ply hose is branded "Paragon," to give it that distinction. 30

Q. How is their three-ply branded?

A. "Eureka" only.

Q. Are the hose, the sections of hose of the three-ply not branded with the name "Eureka Fire Hose Co."?

A. They are; all their hose is branded with their name.

Q. So that none of it is branded with the word "Eureka" alone?

Q. (By the Court)—Do you sell this hose for the complainant from your place?

A. I do; not for them, I sell it for myself.

Q. It comes to you ready for sale? *A.* It does.

Q. (By Judge Lanning)—I understood you to say, then, that none of the three-ply hose made by the complainant company is branded with the word "Eureka" alone?

A. You mean no other words on the hose?

10 *Q.* Yes. *A.* Oh, no.

Q. Invariably, as I understand you, it is branded "Eureka Fire Hose Co."?

A. With the word "Eureka" in addition.

Q. I say, "Eureka Fire Hose Co.," it has those words on?

A. It has the words "Eureka Fire Hose Co." on, also the word "Eureka."

Q. Have you ever seen any hose with the word "Eureka" separate from the other words that constitute
20 its title? *A.* Thousands of feet of it.

Q. Other sections that have been?

A. Understand, I don't mean on separate pieces of hose, but I mean separate—placed on the hose separately. I don't mean that I have seen hose, some bearing the words "Eureka," and others bearing "Eureka Fire Hose Company," but it has the word "Eureka" as a separate brand, denoting that hose, and it also has "Manufactured by Eureka Fire Hose Company."

Q. (By the Court)—For instance, this fire hose
30 comes in sections, of what length usually?

A. Fifty feet.

Q. That fifty feet, I suppose, is coiled up? *A.* Yes.

Q. On each fifty-foot section of hose, what would be the mark; would on every one of those sections the name appear somewhere, "Eureka Fire Hose Co.," as one of the things on it?

A. On the outside, as it is coiled up, in each fifty feet, on the outside that brand, the word "Eureka" in quotation marks.

Q. (By Judge Lanning)—Who does?

A. The Eureka Fire Hose Company; then there is branded “Manufactured by Eureka Fire Hose Co.,” on the same piece, in another place, in smaller type.

Q. That is put on the hose itself?

A. That is put on the hose itself.

Q. Will you look at those samples—

Mr. Lindabury—Can you pick out one that has the word “Eureka” on?

Witness—They all have the word “Eureka” 10
on.

Q. I understand you to say that every section of fifty feet has on it the words “Eureka Fire Hose Co.”?

A. It does, manufactured by it.

Q. You have spoken of the fact, or at least you have stated, that the Eureka Fire Hose is different in construction from any other hose in the market; you mean, I suppose, that the cotton jackets are different in construction, do you not?

A. I mean that the two and three-ply solid woven 20
hose is different in construction.

Q. What do you mean by solid-woven hose?

A. It has a binding thread, uniting the two plies together, making a solid homogeneous mass.

Q. Does that name “Eureka” apply also to the two and three-ply?

A. Yes; I told you before, we used the word “Paragon” to distinguish the two-ply from the three-ply.

Q. Then the term “Eureka” applies only to the three-ply?

A. The term “Eureka” applies only to the three-ply 30
as a distinction.

Q. Now, the three-ply hose, as I understand you, is solid woven; is that right? A. Yes.

Q. Does the complainant make a cotton jacket of separate plies? A. It does.

Q. Does it make a cotton jacket consisting of three separate plies? A. It does not.

Q. Is the cotton jacket, the two separate plies, the one that is designated "Paragon"? *A.* It is not.

Q. What is it designated?

A. "Peerless," "Eureka Peerless" and "Eureka Surprise."

Q. (By the Court)—The two-ply is "Eureka Peerless"?

A. Both the "Eureka Peerless" and "Eureka Surprise" are called jacket hose; they have the two plies
10 separate.

Q. What is the difference between the "Peerless" and "Surprise"?

A. In their construction; in their weave of the fabric.

Q. But they are both two-ply? *A.* Yes.

Q. (By Judge Lanning)—I understand you to say, then, that the hose that is known by the distinctive name "Eureka" is solid woven; am I right?

A. The hose which we know and order as "Eureka" is solid woven and three-ply.

20 *Q.* You don't know of any other hose made by the complainant known by that name that is not solid woven?

A. Why, yes; all of their brands; their mill hose is a single ply, and that is "Eureka Mill Hose."

Q. You were speaking a moment ago of hose that is branded with the word "Eureka" on the outside of the coil, were you not?

A. The word "Eureka" alone?

Q. Yes? *A.* Yes.

30 *Q.* Is not that hose always solid woven hose?

A. It is.

Q. And it is not composed of cotton jackets made up of separable plies? *A.* That is right.

Q. Some cotton jackets are made of different plies, so that the one is slipped over the other, are they not?

A. They are. They don't call those plies in the strict meaning of the word; they are jackets then.

Q. Still in popular conversation, though, and in the trade they are often called "plies," are they not?

A. Yes.

Re-direct examination by Mr. Lindabury:

Q. Do you issue a catalogue? A. I do.

Q. I show you something in red cover, that appears to be your catalogue? A. It is.

Q. Does it describe and advertise those different brands of hose? A. It does. 10

Q. When was that catalogue you have issued?

A. About two years, I think; two or three years ago.

Q. And is it still in use? A. It is.

Q. And did you issue catalogues previous to that of a similar character? A. We did.

Q. Did you in them describe and advertise the complainant's manufacture of hose? A. We did.

Q. Will you tell us on which page, if any, of that catalogue this "Eureka hose" named with that particular name is described? A. On page 7. 20

Q. And on which page is the Mill hose described?

A. Page 13.

Q. How many of those catalogues are in circulation, approximately, of course?

A. I should say, speaking from memory, 5,000.

Q. And to whom did you send them?

A. To railroads and steel and iron corporations, coal companies and to the dealers, large mills and fire departments.

Catalogue offered in evidence and marked *Ex-* 30
hibit C 38.

Q. You sell to all those, do you? A. We do.

Re-cross-examination by Judge Lanning:

Q. I show you the catalogue just handed you, marked *Exhibit C 38*, and direct your attention to the cut of the "Eureka 3-ply" on page 7. The plies appear there by the cut, to be separated, do they not?

A. Separated with a knife, to show that it can be done.

Q. That is what I wanted to ascertain. These plies, then, are inseparable, except by destroying the jacket, cutting them apart, isn't that true? *A.* That is right.

Q. And that goes to show what you said a moment ago, that they are solid woven? *A.* That is right.

Q. In other words, as they pass through the weaving machine all three of the plies, so-called, are woven by
10 one process? *A.* That is right.

Q. Whereas, in other cases, all three-ply hose, which you a while ago said are not properly so-called, but are properly called jackets, the three jackets would be separately woven and slipped over each other?

A. I don't know any with the three jackets.

Q. Two jackets? *A.* They are woven separately.

Q. And one slipped over the other? *A.* Yes.

Q. I call your attention also to the cut of the "Eureka Mill Hose, on page 13 of the catalogue, and ask you
20 if that is one, two or three-ply? *A.* That is one-ply.

Q. So that, of course, is woven by one process?

A. That is right.

Q. In the letter marked *C 36*, dated July 8, 1903, from George P. Thomas, Jr., to your firm, a hose is referred to called "Cowan's." I think you said the complainant company doesn't make that, so far as you know?

A. The complainant company doesn't make a rubber steam hose, as far as I know.

30 *Q.* Is this Cowan's a rubber steam hose?

A. I don't know about Cowan's, except there was a man by the name of Cowan, who used to be, I think, superintendent of the Boston Woven Hose Company years ago; I haven't heard of him for several years.

Q. Are you acquainted with the brand of hose known as "Cowan's"? *A.* I am not.

Q. Do you know whether the Boston Woven Hose Company makes a brand stamped with that brand name?

A. I do not.

Q. Do you know whether the defendant company makes a hose stamped with that name? *A.* I don't know.

Q. Do you know whether the defendant company makes a hose of any of the kinds mentioned in any of these letters which you say you could not furnish from the complainant's stock?

A. They make a steam hose, so I have been told, and have seen their advertisements.

Q. Do you know whether they make a steam hose that agrees with what was asked for here by your customer, George P. Thomas, Jr., in these letters? 10

A. They make a $\frac{3}{4}$ -inch and 1-inch 4-ply steam hose, the same as he asks for.

Q. Do you know whether the defendant makes a hose that is put upon the market as the "Eureka $\frac{3}{4}$ -inch three-ply hose"? *A.* I do not.

Q. Do you know whether the defendant makes and puts upon the market a hose known as 1-inch 4-ply Eureka steam hose? 20

A. Not under that brand, that I know of.

Q. Have you ever seen any hose of the defendant company put upon the market stamped with the word "Eureka" as a brand? *A.* I have not.

Q. Have you in the trade ever learned or heard that the defendant has put upon the market any hose stamped with the brand "Eureka"? *A.* I have not.

Q. You have spoken of a dozen or fifteen different concerns in this country that make cotton hose, I think?

A. Yes. 30

Q. Do you not know of a number of firms or parties that manufacture three and four-ply steam hose, such as is referred to in this letter of July 11?

A. I know of a number of firms who manufacture three and four-ply steam hose, but not "Eureka" three or four-ply steam hose.

Q. Do you know to what extent the cotton hose of other companies than the complainant have found a market in the country?

A. Well, as I said before, there are a great many manufacturers, but none of them manufacture or sell anything like the amount that the complainant does.

Q. You are speaking of your own trade, I suppose, your own business?

A. Yes, and my knowledge of the trade throughout the country.

Q. And you are the sole agent for the complainant company within the territories of New Jersey, Delaware
10 and Eastern Pennsylvania? *A.* Yes.

Mr. Lindabury—Southern New Jersey.

The Court—Do you mean by your answer that no one of the other companies sell as much, or that all of the other companies together don't sell as much as the complainant?

Witness—I supposed that the question applied to my knowledge of the trade in the country in general, but if I speak simply of my territory, I know that I sell more of such hose than all other
20 competitors combined.

Q. You have not sold any in the city of Philadelphia recently, have you? *A.* In the city of Philadelphia?

Q. I mean the fire department of the city of Philadelphia? *A.* No.

Q. You haven't sold any there for years, have you?

A. No.

Q. You haven't sold any in the city of Trenton, New Jersey, have you? *A.* Never attempted to.

Q. Fire departments? *A.* Never attempted to.

30 *Q.* Is that outside of your territory?

A. Trenton, yes, is outside.

Q. You haven't sold any in Harrisburg, have you?

A. I cannot speak positively of that; you mean lately?

Q. Yes, I mean within the last two or three years.

A. I think we have, but I cannot say positively.

Q. You haven't sold any in Eastern Pennsylvania in the last two or three years?

A. I cannot answer such questions, Judge, without my books. I have a salesman who gives his exclusive attention to the fire department business.

Q. So that your testimony, with reference to the extent of the sales, is your general view and impression that you have gathered from your work as a dealer in these kind of goods?

A. Yes. The other day the Pennsylvania Railroad told me I had sold them ninety per cent. of all they purchased, and they are large purchasers. 10

Q. What facilities have you for ascertaining the extent of the business of your competitors?

A. Well, in fire departments we know to whom the award is made. You have asked me about a few cities, but of course I could name cities like Atlantic City and Camden and Lancaster, and places of that sort, that have all purchased recently in considerable quantities; and in corporation trade we know quite well, as I mentioned here a moment ago, I said the other day to the Pennsylvania Railroad people that I thought we sold them about 20 75 per cent. of their hose, and they said, "You are mistaken, you sell us 90 per cent."

Q. You are speaking of what you do?

A. I am speaking of the Eureka Fire Hose Company's cotton hose.

Q. I am asking you what you know of the extent of the trade of your competitors?

A. I know that if we sell 90 per cent., our competitors can only sell ten.

Q. How do you know you sell 90 per cent? 30

A. From the statement made to us by the man who passes on all orders from the Pennsylvania, the insurance.

Q. When did he make that statement?

A. He made that statement to me only a few months ago.

Q. Then your judgment is founded merely upon what he told you?

A. Of course, as one instance; fire departments, I know, of course.

Q. And that statement was with respect to the fire hose used by the Pennsylvania alone?

A. The Pennsylvania system.

Q. Did not relate at all to the fire departments of any of the cities in your territory?

A. That is another matter, because we all know who gets that, because each award is made public.

10

Re-direct by Mr. Lindabury.

Q. In orders that you receive, how are the complainant's goods ordinarily designated?

A. Well, as "Eureka hose," always when they mean the three-ply, and even when they mean the other plies.

Q. I meant with regard to the name of the manufacturer, are they designated otherwise than by the use of the word "Eureka" to indicate the source of manufacture? *A.* No, they are not.

20

Re-cross by Judge Lanning.

Q. If this be the case, how are you enabled to tell what particular brand of the Eureka Fire Hose Company is needed, when you get an order, or is desired?

A. We often have to write and ask.

Q. So that it is impossible for you to fill an order until you have had from your customer a designation of the particular brand that he wants?

A. If a man says "Eureka" hose only, we fill it with
30 "Eureka" hose, the "Eureka" brand. If he says, "Eureka one-ply hose," or "Eureka two-ply hose," we write to him to make sure that he knows what he wants.

Q. And if he orders the "Eureka hose" only, designating it as "Eureka," then you send him the fire hose—solid woven fire hose, designated as "Eureka," and having also their corporate name stamped upon the sections? *A.* Not invariably.

Q. What do you do then?

A. For instance, if we get an order for so many hundred feet of "Eureka hose" from a mill, or from some factory, we are very sure that they don't want the heavy hose; they want the Eureka Fire Hose Company's hose, but they don't want the heavy hose, and we know it.

Q. They want, then, the brand that is known as the "Eureka Mill Hose"?

A. Quite likely, or else their "Red Cross."

Q. In such cases do you write to find out what they want? *A.* We write to them.

William J. Kingsland, sworn for complainant.

Direct examination by Mr. Lindabury.

Q. Where do you live? *A.* South Orange.

Q. What is your business? *A.* Exporting.

Q. What do you export, I mean general lines?

A. General lines, largely hardware supplies and machinery.

Q. Do you deal in any fire hose? 20

A. Well, to a very limited extent.

Q. Do you deal in garden hose?

A. Almost exclusively.

Q. You mean almost exclusively, so far as you do at all? *A.* Yes, sir.

Q. Not almost exclusively so far as your business goes? *A.* No, hardly.

Q. And is your exporting chiefly hardware, do I understand you?

A. Largely hardware supplies and machinery. 30

Q. How long have you been in that business?

A. About twenty years.

Q. Do you export any of the complainant's products?

A. We do.

Q. The complainant is the Eureka Fire Hose Co. Did you say what you export? *A.* The "Eureka."

Q. What in the "Eureka" line?

A. The garden hose.

Q. For the most part?

A. The most part, yes.

Q. And to any extent do you export anything else of their product?

A. There is probably an occasional order for Mill Hose; it is not a very large item, owing to the English competition.

Q. To what countries and to what extent do you export their garden hose?

10 *A.* To Australia, New Zealand, South Africa—the extent I don't know just now, it is not a very large trade, being the garden hose mostly, but there are a good many others exporting, you know, I am only one. I refer to my trade, personal trade, in the "Eureka Garden Hose" goods; it is not a very large one.

Q. Have you any connection, however, with the exporting generally of the complainant's goods to Australia? *A.* I have.

Q. What is that?

20 *A.* We introduced the hose, I think, about twenty years ago; I personally was the first one, I think, that introduced the hose in that market, and the business, of course, resulted from a great many different channels.

Q. Introduced it where? *A.* In Australia.

Q. And how was it introduced in South Africa, if you know?

A. I had a representative in South Africa, and for one, I think, he was instrumental, but whether he introduced it or not, of course I cannot say.

30 *Q.* Now, have you by reason of that, any connection with the exporting of the complainant's hose, to those countries, by whomsoever it is done? *A.* I have.

Q. You get some compensation or commission?

A. I have a personal interest in the sale of the goods.

Q. Has that led you to inform yourself as to the extent of the export trade in those goods to those countries?

The Court—You mean you have a partial interest in the sale of the goods done by other exporters?

Witness—Yes, I have.

Q. All of the complainant's garden hose? *A.* Yes.

Q. Has that led you to inform yourself as to the extent of the exportation of their hose?

A. Well, certainly.

Q. Can you give us some idea of whether it is extensive or not, or what the extent is? 10

A. The gross figures, I could not; I have known of shipments, though, of single orders of \$2,000.

The Court—If that is important, the best evidence would be the shipments themselves, but I suppose it is introductory.

Q. You said you have been in Australia? *A.* I have

Q. In connection with the sale of their goods?

A. In my business.

Q. Are you able to say whether the "Eureka" goods have a reputation there or not, and what it is? 20

A. It has been ten years since I was in Australia, twelve years, and when I was there last, I don't think, I don't remember seeing any other cotton-covered hose than the "Eureka"; now, that condition doesn't exist to-day, because I have known of other hose going.

Q. Have you such business advices from there and business connection there as to enable you to tell what the reputation of the "Eureka" goods is there now?

A. Oh, yes; I have an office there, a traveler.

Q. Now, what is the reputation of these goods in Australia now? *A.* Well, their hose stands first. 30

Q. Are you able to speak also with respect to South Africa?

A. Not so clearly; my information there, of course, is through my traveler, but I should say the reputation there was identical with that in Australia.

Q. How are the goods known; how are the goods made by the complainant known, by what name or names in the trade? *A.* "Eureka hose."

Q. By what name are they usually designated in orders, as indicating the source of manufacture?

Judge Lanning—Objected to. The orders ought to be produced.

The Court—I think he may speak of that. I take this to be the general course of trade. I don't think it would be practical to produce all the orders obtained in a series of years. I think the latter part of the question is objectionable.

10 *Q.* By what name are they usually designated in orders.

Judge Lanning—Objected to.

A. The orders, as I recall them, sometimes come for the Eureka Hose Company, and orders from the—(interrupted.)

Judge Lanning—I meant that my objection should be to that.

20 *Witness*—As cotton-covered hose from the Eureka Hose Company, sometimes the Eureka Fire Hose Company, and sometimes as “Eureka Garden Hose.” I should think those three would cover the orders, as I recall them.

Q. Whatever variation there may be in that description, is there any one word that is invariably contained in it? *A.* Yes, “Eureka.”

Q. Are you acquainted with the value of that word “Eureka” in connection with the sale of these goods in this country?

30 *A.* Only in an indirect way; I know the name is an important one.

Q. You have not yourself put any of these goods on the market in this country? *A.* No.

Q. Are you able to speak of the reputation of the complainant's goods under the name of the “Eureka” in this country?

A. No positive knowledge, general repute only.

Cross-examination by Judge Lanning:

Q. Mr. Kingsland, how is the hose that you have exported branded?

A. I don't see the hose as it goes forward.

Q. You cannot tell?

A. I cannot tell positively, but I know it has been branded "Eureka," and I suppose it should be all branded "Eureka."

Q. No, not what you suppose. Has not the garden hose, the mill hose that you have sent, been branded with the name of— 10

A. I refer to the garden hose; each length is branded "Eureka."

Q. Is it not branded with the name of the company, "Eureka Fire Hose Co."? *A.* I am not sure.

Q. You are not sure that it is branded with the word "Eureka"?

A. I know that it has been, but whether it is all I don't know.

Q. The word "Eureka" without anything else? 20

A. I am not positive.

Lyman H. Howard, sworn for complainant.

Direct examination by Mr. Lindabury:

Q. Where do you live, Mr. Howard? *A.* Brooklyn.

Q. What is your business? *A.* Dealer in fire hose.

Q. Did you ever call at the office of the defendant company in New York with respect to hose of their manufacture? *A.* Yes.

Q. And get samples? *A.* Yes, sir. 30

Q. And circulars? *A.* Yes, sir.

Q. When was this?

A. I don't just remember the day; probably a week or ten days ago.

Q. Did they give you a memorandum with respect to the kind of hose you inquired about? *A.* Yes.

Q. Will you look at the paper which I show you, which bears your name at the top, and tell me whether

or not that is what you got, or whether or not you got that from there? *A.* Yes, sir; I did.

Q. Where? *A.* At 55 Warren street.

Q. Do you know whether that is the defendant's office or not, in New York? *A.* Yes, sir.

Q. How do you know that?

A. I saw the name and also the number of the street.

Q. Did you get with that the circular? *A.* Yes.

Q. And the card pinned to it? *A.* Yes.

10 *Q.* At the same time? *A.* Yes.

Q. Who gave them to you?

A. This gentleman right here (referring to card), Carl H. Boeker.

Q. There is a card of the defendant company here, is there not? *A.* Yes.

Q. And his name is stenciled upon it? *A.* Yes.

Q. And is he the gentleman who gave you the quotation? *A.* Yes, sir.

20 *Q.* And when did he give you the card, with regard to the time of giving you the quotation?

A. At the same time he gave me the samples, catalogue and also the discounts.

Q. I hand you three samples of hose; where did you get them?

A. The gentleman whose name appears on the card.

Q. Mr. Boeker? *A.* Yes.

Q. At the same time? *A.* Yes.

30 Mr. Lindabury—I will first offer in evidence, in one batch, the memorandum quotation, the card with Boeker's name on, and the catalogue entitled "Preliminary Catalogue," three pieces fastened together as one exhibit.

(Marked *Exhibit C 38, Howard.*)

I next offer the three samples of hose that the witness has produced, tied together with a string, and each being 2½-inch hose.

(Marked *Exhibit C 40, Howard.*)

Q. Were these tri-colors on the catalogue when you got it, as they appear now? *A.* Yes.

Q. Just as they are now? A. Yes.

Q. Both back and front, on the back as well as front?

A. Yes.

Mr. Lindabury—I will state to counsel and the Court that what we especially rely on in this circular is the use of the tri-color, and on the third page, paragraph headed “How to Tell Eureka Goods.” However, we shall rely on the whole circular.

Q. Do you sell rubber hose? A. Yes, sir. 10

Q. The hose made by the complainant company?

A. Yes.

Q. Where, what territory? A. New York City.

Q. How long have you been doing that?

A. About three years.

Q. Is there other hose sold in competition in that market? A. Yes.

Q. What is the reputation of the complainant's goods in the trade where you deal?

A. Well, I find people are asking for those make of 20 goods.

Q. How are they known?

A. By their stamp; their goods are all stamped, which I have sold, “Eureka Fire Hose Co.”

Q. How are they spoken of in the trade, by what name? A. The “Eureka.”

Q. And do you know how they sell in competition with other goods, as to largeness of sale, or prices?

Judge Lanning—Objected to.

The Court—I think that is information that 30 would come in the course of trade.

A. Different prices, according to different grades.

Q. What brands of hose do you sell?

A. The “Eureka Underwriters Best Linen Hose,” “Twentieth Century,” the “Premier,” the “Trade,” the “Red Ball.”

Q. Are those all fire hose? A. Yes.

Q. Are there other hose on the market of the same general character as these? A. Yes.

Q. How do the "Eureka" hose sell in competition with these others, as to price?

Judge Lanning—With which others?

A. There are a better grade of hose; the best grade of hose we sell for a higher price.

The Court—You mean the best grade of the "Eureka" fire hose sells for a higher price than that?

Witness—Than others, the better grade.

10 Q. The best grades of the "Eureka" sell at a better price than the best grades of other similar hose?

A. Yes.

Q. And as to quantity sold, do you know anything about that? A. I do not.

The Court—He hasn't shown any knowledge that he is a judge of that.

Cross-examination by Judge Lanning:

Q. I wish you would give me the names again of the
20 different brands of hose you named a moment ago.

The Court—You are asking the ones he sells?

Judge Lanning—I don't know whether he sold them or not.

A. "Eureka Underwriters Best."

Q. Do you sell that?

A. Yes. "The Twentieth Century."

Q. Whose manufacture is that? A. The Eureka.

Q. And do you sell that? A. Yes.

Q. Is that stamped "Twentieth Century"—is the hose
30 that you know by the name "Twentieth Century" so stamped? A. Yes.

Q. What is the next? A. The "Premier."

Q. Is that the Eureka Fire Hose Company's product?

A. Yes.

Q. And is it stamped "Premier"? A. Yes.

Q. What else did you name? A. The "Trade."

Q. Is that the product of the Eureka Fire Hose Co.?

A. Yes.

Q. And is it stamped "Trade"? A. Yes.

Q. You mentioned another? A. The "Red Ball."

Q. Is that a product of the Eureka Fire Hose Co.?

A. Yes.

Q. And is it so stamped "Red Ball"? A. Yes.

Q. Are those all fire hose? A. Yes.

Q. Are they all cotton jacketed? A. No, sir.

Q. Which are not?

A. Those which I have mentioned are the linen hose.

Q. All these are linen hose? A. Yes. 10

Q. So that they are not rubber lined at all?

A. Not rubber lined.

Q. Your questions that you have answered to counsel on the other side, have they all related to linen hose?

A. No, sir.

Q. Those answers all related to linen hose?

A. No, sir.

Q. Did you sell any cotton hose? A. Yes.

Q. What brand? A. The different brands of those.

Q. What? 20

A. The "Eureka" is one brand, and the "Premier"—
I should have said the "Pioneer," and I think there is one other brand; I won't be positive about that; it slipped my mind, the name.

Q. Is the "Pioneer" stamped "Pioneer"? A. Yes.

Q. Is it a one, two or three-ply hose?

A. Three-ply, I think it is.

Q. Are you sure about that? A. I am not sure.

Q. That is rubber lined?

A. That is rubber lined.

Q. What you spoke of as the "Eureka" hose, is that stamped with the name of the company, "Eureka Hose Co."? A. Yes, "Eureka." 30

Q. And is that rubber lined? A. Yes, sir.

Q. Do you deal in any cotton jackets alone, without the rubber lining? A. I do not.

George A. Gardner, sworn for complainant.

Direct examination by Mr. Lindabury:

Q. Where do you live?

A. 57 West 130th street, New York City.

Q. What is your business?

A. Rubber business, with the Revere Rubber Company.

Q. What is the Revere Rubber Company?

A. Manufacturers of all lines of mechanical rubber
10 goods.

Q. In New York City?

A. No, sir; Chelsea, Massachusetts.

Q. Has an office in New York City? A. Yes.

Q. Have you been connected with that for some time?

A. About fifteen years.

Q. You have, of course, all that time been in the
rubber business yourself? A. Yes, the same.

Q. Selling? A. Selling.

Q. Are you acquainted with the different kinds of
20 fire hose in the market? A. Pretty much, yes, sir.

Q. Do you sell any fire hose? A. I do.

Q. Of the manufacture of the Revere Rubber Company?
A. Yes.

Q. How long have you been doing that?

A. About fourteen years.

Q. What kind of hose do they make?

A. They make all kinds of hose.

Q. Do they make rubber-lined cotton hose?

A. Yes, sir.

30 Q. Which are sold in competition with the complainant's
manufacture? A. Yes, sir.

Q. By "sold in competition" I mean for similar use,
similar character? A. Yes.

Q. How many concerns are there that make rubber-lined
cotton hose that are sold in this market, in the American
market?

A. I cannot say offhand, but I should imagine there
are some eight or ten.

Q. And what are the prominent ones; will you give us their names?

A. The Eureka Fire Hose Company, the Boston Woven Hose, the Goodrich, the Fabric Fire Hose Company, New York Belting and Packing Company, the Gutta Percha and Rubber Manufacturing Company; those are the most prominent ones, I presume, and the Boston Belting Company is another manufacturer.

Q. Do the Goodyear make rubber-lined cotton hose?

A. I don't think they do.

10

Q. You haven't heard of their hose in the market?

A. No.

The Court—And your own should be included?

Witness—Yes.

Q. Mr. Gardner, how long have these companies that you have named been in the market with rubber-lined cotton hose; I mean, some years?

A. Yes, ten or fifteen years.

Q. All of them established, are they?

20

A. With the exception of the Goodrich; I think the product of them has been of more recent years, but probably the last three or four years.

Q. How are the goods of the complainant, the Eureka Fire Hose Company, known to the trade?

A. Just simply as "Eureka" goods.

Q. How are the goods of the Boston Woven Hose Company known in the trade?

A. Generally as "Woven Hose Company."

Q. How are the Goodrich Company's goods known, by what name? *A.* By "Goodrich."

30

Q. And the "Fabric Hose"? *A.* "Fabric" simply.

Q. And the New York Belting and Packing Company, how are their goods known, by what name?

A. "N. Y. B.," something of that kind.

Q. And the Gutta Percha and Rubber Manufacturing Company? *A.* "Gutta Percha."

Q. And the Boston Belting Company?

A. "Boston Belting."

Q. And the Revere? *A.* By "Revere."

Q. By the one word "Revere"?

A. One word "Revere."

Q. The New Jersey Car Spring and Rubber Company, I believe, by the evidence, was once, at least, engaged in the manufacture of rubber-lined cotton hose?

A. I believe they are still.

Q. How is their product known, by what name?

10 *A.* "Car Spring" generally.

Q. So that in the trade the names of the products of these concerns are as a rule abbreviated to one word or two? *A.* Yes.

Q. Up to December, 1902, one year ago, was there any other hose in the market known or sold as "Eureka," except the product of the complainant?

A. I knew of none.

Q. Did you ever hear of any? *A.* No, sir.

20 *Q.* Was that name used in the trade to designate the manufacture of any other company than the complainant, so far as you know or ever heard?

A. Not to my knowledge.

Q. How does the product of the complainant company stand in reputation in this country in comparison with the product of those other companies that you have named? *A.* Stands very good.

Q. Has the product of any other company a reputation superior to that of the complainant? *A.* No, sir.

30 *Q.* Do you know how the "Eureka" goods sell as to price, in comparison with goods of a similar grade or character manufactured by these other companies?

A. Well, I cannot answer that question exactly, because we all vary our prices at times; we all vary our prices somewhat at times.

Q. When you don't cut prices, how do they run; are there any goods of a similar character made by any of these other companies that command a higher price than the Eureka's?

A. As a rule, they command a lower price.

Q. Is the name "Eureka" branded upon goods of assistance or value in the sale or disposition of the goods?

A. Yes, sir; I should say yes.

Q. Why?

A. Simply because the company, the Eureka Company have always delivered first-class goods, and they have got an exceptionally good reputation on their various brands of goods, and consequently a man looking at the word "Eureka" on the goods, would naturally think that the goods were of a high standard. 10

Q. How widespread is that good reputation, as far as your knowledge goes?

A. I should think all over this country and in Canada.

Q. How long has that existed?

A. Ever since I have been in the business.

Q. Have you met the defendant's product in the trade?

A. I have been against them and been a competitor, and in bids with them, if that is what you mean by "meet them." 20

Q. Do you know of any instance of confusion arising as to whether particular brands of goods were their manufacture or of the complainant's?

A. Yes, I can recall one.

Q. Narrate it.

A. Why, this was a case where I was at the navy yard, here about two weeks ago, and I went over there in the interest of our own company, expecting to get on order for some fire hose that the Eureka Rubber Manufacturing Company had taken on an open bid, and it ran in my mind that it would probably be rejected, because they had never had any experience in furnishing these goods. 30

Judge Lanning—Objected to.

Q. You went there with the idea of getting an order?

A. That was my reason, and in conversation with the paymaster over there, I simply remarked—

Judge Lanning—Never mind that conversation.

Mr. Lindabury—I think you can give that.

The Court—The evidence of this witness is not admissible on that point.

Q. Do you know whether or not the bid that the defendant company had put in was at first accepted?

Judge Lanning—Objected to.

10 The Court—I don't see how that is relevant. If it turns out hereafter that it is impossible to procure the original evidence, then I will let you apply to prove as much as you can by this witness, but I do not think this evidence is admissible now.

Q. Do you know whether or not the bid of the defendant company was in fact rejected?

Objected to. Objection sustained.

20 Q. Do you know whether or not the goods covered by the bid of the defendant company were in fact delivered?

Objected to. Objection sustained.

No cross-examination.

Benjamin L. Stowe, recalled.

Direct examination by Mr. Lindabury.

30 Q. Some question arose this morning which led to an inquiry by his honor, with regard to how the sections of hose were sent out, as to length and stamp, and I asked you to produce a complete section of the kind we were talking about. Have you done that?

A. Yes, I telephoned to our factory, and they have sent this section to me. It is a section taken from a lot of 20,000 feet of that size, that is just being delivered in New York City.

Q. To the fire department?

A. The fire department in New York City.

Q. What is the size of this? A. 2½-inch.

Q. And it is a three-ply rubber-lined cotton hose?

A. Yes, for fire purposes.

Q. This has the connections on? *A.* Yes, it has.

Q. And is in the condition in which you ship it to the trade? *A.* Ready for shipment.

Q. What is stamped on this?

A. That is stamped with the word "Eureka."

Q. By itself? *A.* By itself.

The Court—In black?

Witness—Yes, that is branded; not all hose is branded as that is; that is the way New York City has branded it for a good many years past. Some cities specify how you shall put the name, and of course that makes a little variation in the branding.

Q. Are you able to tell us whether or not this brand that is on this, of the word "Eureka," is under specification or requirement of the New York City Fire Department?

A. It is not at present, but it has been in the past; it is not at present.

Q. Is this brand of the word "Eureka," on hose of a similar size and character, to which the witness from Philadelphia this morning testified, if you know, of course?

Judge Lanning—Objected to.

A. I don't know whether he has it identical or not in the branding, but he has had the word "Eureka."

Q. He testified this morning that he had been selling for some years 2½-inch size three-ply rubber-lined cotton hose, with the word "Eureka" stamped upon it, separate from the name of the manufacturer? *A.* Yes.

Q. I want to know whether or not this stamping of the word "Eureka" here is like the stamping of that word on similar hose, where that word is used alone?

Judge Lanning—Objected to. I think you ought to produce the samples.

The Court—He may describe it, and if it is not clear, I will let them produce the samples.

A. Not always.

Q. Is a stamp like this on hose of this size and character ?

A. That is of one kind ; we vary that mark sometimes. This is as it is put on for New York, and delivered sometimes elsewhere, but we sometimes use it in black, sometimes red ; New York used to ask for it in black, because black ground and white letters caused it to remain distinguishable longer.

10 *Q.* How else have you used it, or do you use it?

A. We have used it the Eureka in quotation marks, like that sample, No. 4.

Q. This is a brand in regular use, No. 4? *A.* Yes.

Q. How else?

A. We branded it "Eureka Fire Hose Co."

The Court—What sample is that?

Witness—I mean "Eureka Fire Hose," Sample No. 15, also Sample No. 8.

Q. Is or not Sample No. 5 a piece of the hose of
20 which you have produced this full coil this morning?

A. It is practically the same fabric ; it is not identically the same weave, but it is practically the same weave ; it is Eureka hose the same as that.

Q. But of a little different weave?

A. A different weave, that is all.

Q. What else is stamped, if anything, on this section produced here this morning, the fifty-foot section?

A. The name of the company. We formerly put in connection with that the words "Manufactured by,"
30 but recently there was so much branding on the hose, and we marked it "Tested," and we omitted the words "Manufactured by," and now mark it "Eureka Fire Hose Co."

The Court—What is the other word?

Witness—"Tested," to a certain pressure.

Q. The pressure test is stamped on it?

A. Yes, also the words "Eureka Fire Hose" stenciled on it, and the design of an eagle on a hydrant, with the

words "Trade Mark." The branding on the end is similar; it may not include the whole, but both ends of the section are marked, and the name appears on the coupling.

Q. The coupling is brass? *A.* Yes.

Q. And the name is stamped in? *A.* Yes.

Cross-examination by Judge Lanning.

Q. I understand that this word "Eureka" as stamped on this coil that has been produced here, is the name that **10** is stamped upon your three-ply fire hose?

A. That particular brand is not stenciled on all of it, stenciled on some of it.

Q. On some of your three-ply fire hose? *A.* Yes.

Q. Not on any other kind of fire hose than three-ply fire hose? *A.* That one brand we would not use.

Q. And I understand that this particular brand "Eureka" with the black background, is a stamp that is used solely for the New York City Fire Department?

A. I will not say solely; we have put it out in some **20** other places.

Q. Do you know where you have put it out elsewhere? *A.* I don't recall at present.

Q. Mr. Boyd this morning testified that the hose that he has dealt with was stamped with red letters; is that the usual way of stamping your hose that goes upon the market? *A.* It is usual; we do use black letters.

Q. And this hose stamped for the New York City Fire Department is solid woven, is it not?

A. Solid woven. **30**

Re-direct by Mr. Lindabury.

Q. Does the solid woven hose appear differently to an external examination, from the plies that are not woven solidly?

A. Not very materially from weaves made similar to that in appearance.

Q. What I want to know is whether or not the external appearance of the solid woven hose is materially different from the same number of plies that are not woven solid? A. Not materially; we have a variety.

Q. I am speaking of the outward appearance.

The Court—Could persons in the trade—could they tell from the outside appearance whether it was a solid woven or ply?

Witness—There may be a difference in the
10 number of warp threads, that an expert would count and distinguish the difference, but to a person not an expert, he would probably not notice the difference.

Q. Are you comparing one kind with another of your own manufacture? A. Yes.

Q. I wasn't asking that. I am supposing that you find your hose in the market, and the hose of some other company made like yours, except that it is solid woven, would an ordinary dealer notice the difference?

20 A. No, I think not.

Large coil of hose produced by witness is offered in evidence and marked Sample No. 21.

George A. Wies, recalled.

Direct examination by Mr. Lindabury.

Q. Mr. Wies, when you were upon the stand yesterday, you produced a very large bundle of letters and orders, said to be 131 in number, to which there is attached, by way of preface, a memorandum showing the
30 year 1901. Were these gotten together from the files for that year? A. Yes, sir, they were.

Q. Now, then, were these all received by your company? A. Yes, sir; in the course of business.

Q. Some are letters? A. Yes.

Q. And some are orders? A. Yes.

Q. And some are telegrams? A. Yes.

Q. And they all relate to ordinary business transactions? A. Yes, sir.

Q. Received, of course, before the organization of the defendant company, and before, I suppose, you heard anything of it? A. Yes, received during the year 1901.

Q. Now, then, how many of these were addressed to you by the name "Eureka" alone? A. Fourteen.

Q. (By the Court)—What do you find, "Eureka Company"? A. Just the word "Eureka" alone.

Q. On the envelopes?

A. On the letter it is; I don't know about the envelopes. 10

Q. (By Mr. Lindabury)—You haven't kept the envelopes? A. No.

Q. It is on the face of the letter, order or telegram?

A. Yes.

Q. Now, were these addressed to you at your place of business? A. Yes.

Q. And they came to you all right by that name?

A. Yes.

Q. Now, the next four are addressed how?

A. "Eureka Rubber Co." 20

Q. The next 99? A. "Eureka Hose Co."

Q. The next one is addressed how?

A. "Eureka Hose Manufacturing Co."

Q. The next one?

A. "Eureka Fire Hose and Rubber Co."

Q. The next ten?

A. "Eureka Fire Hose Manufacturing Co."

Q. The next one?

A. "Eureka Wire Hose Company."

Q. There is a wire hose made in the market, isn't there? A. Yes, hose covered with wire. 30

Q. Do you make it?

A. Sometimes, if we get orders, yes, sir.

Q. And the next one? A. "Eureka Fire Engine Co."

Marked *Exhibit C 41, Wics.*

Q. The next is for 1900? A. Yes.

Q. This bundle contains all letters, telegrams and orders of the same general kind as the last? A. Yes.

Q. But for the year 1900? A. Yes.

Q. The first 35 are addressed how? A. "Eureka."

Q. The next one? A. "Eureka Rb. Hose Company."

Q. The next 82? A. "Eureka Hose Company."

Q. The next one?

A. "Eureka Hose Manufacturing Company."

Q. The next seven?

A. "Eureka Fire Hose Manufacturing Co."

Q. The next one? A. "Eureka Fire Company."

10 Q. The next one?

A. "Eureka Fabric Hose Company."

Q. The next one?

A. "Eureka Fire Supply Company."

Marked *Exhibit C 42, Wies.*

Q. The next batch seems to be for the year 1899?

A. Yes, sir.

Q. Same general character as the other two?

A. Yes.

Q. The first two are how addressed? "Eureka."

20 Q. The next one?

A. "Eureka Fire Hose and Rubber Co."

Q. The next 58? A. "Eureka Hose Co."

Q. The next two?

A. "Eureka Fire Hose Manufacturing Co."

Q. The next one? A. "Eureka Wks Co."

Marked *Exhibit C 43, Wies.*

Q. The next bunch is for the year 1898? A. Yes.

Q. The first three are addressed how? A. "Eureka."

Q. The next two? A. "Eureka Rubber Company."

30 Q. The next 26? A. "Eureka Hose Company."

Marked *Exhibit C 44, Wies.*

Q. The next year I show you is what? A. 1897.

Q. The first five of these are how addressed?

A. "Eureka."

Q. The next one? A. "Eureka R. Company."

Q. The next one? A. Eureka Hose Company."

Q. The next 17?

A. "Eureka Manufacturing Company."

Marked *Exhibit C 45, Wies.*

Q. Are you sure whether or not you examined the files exhaustively for that last year, 1897?

A. I believe we did.

Q. There seem to be so few in comparison with the years before and after?

A. I believe we did, yes, sir.

Q. You suppose you have got them all? A. Yes.

Q. I show you the year 1896. How are the first 13 in this bundle directed? A. "Eureka."

Q. The next two? A. "Eureka Rubber Company." 10

Q. The next one?

A. "Eureka Hose and Rubber Company."

Q. The next 9?

A. "Eureka Fire Hose Manufacturing Company."

Q. The next three? A. "Eureka Fire Company."

Q. The next two?

A. "Eureka Fibre Hose Company."

Q. The next one?

A. "Eureka Fire Hose Fabric Company."

Q. The next 124? A. "Eureka Hose Company." 20

Marked *Exhibit C 46, Wies.*

Q. I show you 1891. You took nothing between 1891 and 1896? A. No, sir; I did not.

Q. In the bundle for 1891 the first four are how addressed? A. "Eureka."

Q. The next five? A. "Eureka Rubber Company."

Q. The next 146? A. "Eureka Hose Company."

Q. The next one?

A. "Eureka Rubber Hose Company." 30

Q. The next two?

A. "Eureka Fire Hose Manufacturing Company."

Q. The next one? A. "Eureka Fire Company."

Q. The next one?

A. "Eureka Woven Hose Company."

Q. The next one?

A. "Eureka Line and Hose Company."

Q. The next two?

A. "Eureka Fabric Hose Company."

Q. The next one?

A. "Eureka Mill Hose Company."

Q. The next one?

A. "Eureka First Hose Company."

Q. Next one?

A. "Eureka Belt Company." There is such a corporation as "Eureka Belt Company."

Q. Is there a corporation of the name of "Eureka Belt Company"? A. Yes.

10 Q. Was that meant for you or for that company?

A. Meant for that company.

The Court—That won't be any evidence in this case then.

Judge Lanning—Where is the Eureka Belt Company?

Witness—Their office was, is at 13 Barclay street now.

20 The Court—I take it that these are all letters which are intended for them, and on which they acted in a business way, part of their business correspondence, but this one would not seem to be.

Mr. Lindabury—I will withdraw that letter.

Q. How came you to put that letter in this batch, was it a mistake on your part?

A. It must have been a mistake on my part.

Q. Did you intend to put in here any letters except those which had been misdirected to you, or in which your name had been misused?

30 A. I did not, that was your purpose.

Marked *Exhibit C 47 Wies.*

Q. Did you take out any letters or orders prior to 1891? A. Yes, I did.

Q. For what year? A. 1876.

Q. Nothing between 1876 and 1891? A. No, sir.

Q. You have a bundle marked 1876, 9 months; why nine months? A. I cannot answer that question.

Q. Were you in business the whole of 1876?

A. I believe we were.

Q. Are you positive about that?

A. I won't be positive.

Q. Didn't you begin business in April— A. 1875.

The Court—Tell what he has got here. He has them for nine months of that year, give the result of that.

Q. What months? A. From March.

Q. The last nine months then? A. Yes.

Q. Do you know why you didn't go back to the first 10
of January of that year?

A. Yes, in those days we had no files like we have now, and the letters were in bundles and we couldn't find them.

Q. Now, how many are in this bundle? A. 39.

Q. How are they directed?

A. "Eureka Hose Company."

Q. All of them are directed that way? A. Yes.

Q. Why didn't you take anything between 1876 and 1891? A. Didn't think you wanted them. 20

Q. Was that the direction of Mr. Perkins?

A. I had no directions from Mr. Perkins; I got them out of my own accord.

Q. You got these out, as showing sufficiently, you thought, the subject you were attempting to prove?

A. I thought it would show a fair average.

Marked *Exhibit C 48 Wies.*

Q. Now, Mr. Wies, I think you have already testified that you have charge of the sale of the complainant's goods? A. Yes, sir. 30

Q. You are at the New York office? A. Yes, sir.

Q. And have you charge over everybody else, are you head of the selling department? A. I am.

Q. And how long have you occupied that position?

A. Since 1893.

Q. What other goods in the American market do you come in competition with, I mean the goods of what other manufacturers of a similar character?

The Court—Tell me what you mean now by the general course of your duties as head of the selling department. Are all sales reported to you, directed through you, and prices fixed by you, is that what you mean?

Witness—Yes.

Q.. For all the business that is done?

A. Yes, sir, for the entire company.

10 Mr. Lindabury—I will withdraw the previous question and go further into that.

Q. Are all the goods shipped from a central point?

A. Yes.

Q. Where? A. The factory in Jersey City.

Q. And on whose order? A. New York office.

Q. Of which you have charge? A. Yes.

Q. Into how many states of the American Union do you sell goods? A. I should say every state.

Q. And in what other parts of the American Continent do you sell goods.

20 A. Canada, British Columbia, Alaska, Mexico.

Q. I suppose it is fire hose, or garden hose, in Alaska?

A. Fire hose.

Q. Any trade in South America? A. Yes.

Q. Considerable or not? A. Quite considerable.

Q. Have you any foreign trade? A. Yes, sir.

Q. Where?

A. Most of it in New York through export houses, who order us to deliver the goods on certain vessels.

Q. To what foreign countries do your goods go?

30 A. All over the world.

Q. Have you any considerable British trade.

A. Not very much British.

Q. German? A. Very little German.

Q. In what foreign countries do you principally sell your goods?

A. Denmark, Australia, South Africa, the Isthmus of Panama, Chili, Brazil.

Q. When did you ship any goods down to the Isthmus? A. Within six weeks.

Q. Did you send any down for any government vessel? A. No.

Q. What other companies make rubber-lined cotton hose that is sold in the American market?

A. Bowers Rubber Co., San Francisco.

Q. By what name is their product known to the trade?

A. Bowers' goods.

Q. Go on, the next?

A. B. F. Goodrich, Akron, Ohio.

Q. How are their goods known, by what name? 10

A. "Goodrich."

Q. Go on?

A. Cleveland Rubber Works? Cleveland, Ohio.

Q. By what name are their goods known?

A. "Cleveland."

Q. Go on? A. Revere Rubber Co., Boston.

Q. How are their goods known? A. "Boston Revere."

Q. Tell us about the Boston Belting?

A. Boston Belting Co., Boston. 20

Q. How are their goods known?

A. "Boston Belting," or "Belting."

Q. What others?

A. New Jersey Car Spring and Rubber Co.

Q. How are their goods known?

A. By the "Car Spring Co."

Q. What others?

A. New York Belting and Packing Co.

Q. By what name are their goods known?

A. "Belting and Packing." 30

Q. Any others?

A. Peerless Rubber Manufacturing Co.

Q. Where are they?

A. Their main office is New York; their factory is at New Durham, New Jersey.

Q. By what name are their goods known?

A. "Peerless."

Q. Any other?

A. Gutta Percha Manufacturing Co.

Q. That is a large concern? *A.* Very large.

Q. One of your chief competitors, or is it not?

A. Yes.

Q. Is it your chief one in the American market?

A. It is on fire hose, yes, sir.

Q. How are their goods known, by what name?

A. "Gutta Percha."

Q. How are your goods known in the market?

10 *A.* As "Eureka goods" or "Eureka Company."

Q. How long have your goods been known by these names?

A. Since I have been with the company I have known of it.

Q. How are they usually spoken of in the market or trade? *A.* As "Eureka."

Q. How are they ordinarily described in orders?

Judge Lanning—Objected to.

The Court—I think it is admissible.

20 *A.* In various ways.

Q. Is there any one way by which they are chiefly or most frequently described?

A. Almost frequently as "Eureka goods."

Q. What are the other words?

A. In some cases a particular brand is specified.

Q. Is there any one word that is ordinarily used to cover all the brands? *A.* Mostly "Eureka."

Q. Do you find the name of any value, "Eureka," in the sale or disposition of your product?

30 *A.* Of great value.

Q. How are you able to ascertain that?

A. By my contact with the trade and by meeting competitors, and finding many large users of fire hose, and demand for our goods, and they are held up as standards.

Q. Are there other goods made by these other manufacturers whom you have named of the same general class and quality as yours? *A.* Yes.

Q. How are they sold as to price in the market, compared with yours?

A. On our high-grade standard brands our prices are higher.

Q. And as to quantity?

Judge Lanning—What knowledge has he as to the extent?

Mr. Lindabury—I will find out.

After recess.

10

Q. Do you know how your goods have sold in comparison with those of the other manufacturers of the same grades as to quantity? A. Yes, sir.

Q. What can you say about that?

A. I think we sell more hose than any other concern in our line of business.

Q. Within what territory?

A. In the United States.

Q. Have you told us what manufacturer sells, so far as you can tell, the next highest quantity?

20

A. I should say the Fabric Fire Hose Co.

Judge Lanning—Sells what?

Mr. Lindabury—Sells fire hose.

Q. And their goods are known as what?

A. "Fabric Hose."

Q. And the next is what?

A. I should say the Gutta Percha and Rubber Manufacturing Co.

Q. And their goods are known as what?

A. As cotton, rubber-lined hose and rubber hose.

30

Q. By what name? A: "Gutta Percha."

Q. All designating the manufacture? A. Yes.

Q. Are your goods all stamped, your fire hose?

A. Yes, sir.

Q. Are there any on which the word "Eureka" is not stamped, either alone or in combination with other words?

A. On some of the superior grades of Mill hose they are sold without brands, as the parties who buy them wish to brand them with their own brands.

Q. But are there any goods sold by you with any designation at all of the source of manufacture that don't have the word "Eureka" on in some form?

A. None of our standard brands are sold without the brands on them.

Q. Then you do manufacture for others? *A.* Yes.

10 *Q.* What kind of goods; I mean the rubber-lined cotton hose?

A. Rubber-lined cotton hose and linen hose and cotton jackets.

Q. And those you don't sell to the trade, but to other manufacturers or dealers? *A.* To other manufacturers.

Q. And without any stamp at all on them?

A. Simply marked on the end to distinguish the length and the kind.

Q. Do you use "tri-color" on your goods? *A.* Yes.

20 *Q.* What is the color?

A. We use red, white and blue.

Q. How do you put it on?

A. The cotton is dyed and it is woven right into the fabric.

Q. Permanent dye, is it? *A.* Permanent dye.

Q. How extensively do you use that?

A. We use that in the "U. S. Eureka brand of Underwriters" hose, on "Eureka Garden Hose," and in linen hose, "Underwriters Eureka," "Underwriters
30 best linen hose."

Q. How long have you been doing that?

A. Prior to 1890, I believe.

Q. And ever since? *A.* Yes.

Q. Do you manufacture those brands extensively?

A. Yes, sir.

Q. Are they or not leading articles in your line?

A. They are.

Q. You have seen the samples, I think, of your hose produced here with the tri-color? *A.* Yes.

Q. Those are the kind, are they, that you have referred to? *A.* Yes, sir.

Q. Does your use antedate the registration of the tri-color? *A.* Yes.

Q. As shown by the registration certificates here?

A. Yes.

Q. How came you to begin the use of this tri-color?

The Court—Wasn't that explained by some 10 other witness?

Mr. Lindabury—I think it was.

Q. But as to garden hose, I think Mr. Stowe has explained the occasion for the use of the tri-color upon "Underwriters hose"; how came you to adopt it in the manufacture of your garden hose?

A. To meet competition we were forced to make some cheaper grades of garden hose, two cheaper qualities, and we put a distinguishing line in the "Eureka" so that it could be distinguished from the others. In other 20 words, the three qualities of hose look a great deal alike to anybody that wasn't posted and didn't know.

Q. On which grade do you put the tri-color?

A. On "Eureka" grade only.

Q. The best grade of your garden hose?

A. The highest quality we make.

Q. Is there any better quality of garden hose made in the country, I mean of the cotton-rubber lined?

A. Not to my knowledge.

Q. Now, have you exhibited your hose at the public 30 exhibitions about the world from time to time?

A. Yes, sir.

Q. And have you ever obtained any medals for it?

A. Yes, sir.

Q. I show you framed under glass a number of medals, beginning with the Centennial Exposition, Philadelphia, Pa., in 1876. Was that awarded to you by the managers of the Centennial Exposition?

A. It was.

Q. For what? *A.* Superiority of goods.

Q. What kind of goods?

A. Fire hose and cotton rubber-lined hose for hydraulic purposes of all kinds.

Q. There are two here, reverse sides of the same medal? *A.* Yes.

Q. The next in date to that is what?

A. Paris, France, in 1878.

10 *Q.* That occupies the center of this frame?

A. Yes, these three, and the Legion of Honor was awarded to Mr. Reed, who personally attended the exhibition; he was then president of the company.

Q. And what was that awarded to him for, personal quality or quality of hose?

A. I have always understood for the quality of the hose.

Q. The other is for the quality of the hose?

A. Yes, I always understood so.

20 *Q.* And the same hose that you speak of, the fire hose?

A. Yes.

Q. Do you know whether it covered garden hose also?

A. It covered our entire line that we manufactured at that time.

Q. What did you exhibit there, an entire line?

A. Yes.

Q. What is the next?

A. Barcelona, Spain, 1888.

30 *Q.* What did you exhibit there?

A. A full line of fire hose and everything we manufactured in the way of hose, various qualities.

Q. And you received this medal for that?

A. It was supposed to be a gold medal.

Q. For your exposition? *A.* Yes.

Q. Do you know whether that is the highest medal for that kind of goods? *A.* It was, for that class.

Q. What do you say the Centennial medals and the French Exposition medals were for?

A. I have always understood they were awarded for superiority; it was before my time.

Q. But as to whether they were the first or highest medal for that kind of goods?

A. I understood it was the highest award.

Q. What is the next? *A.* Paris, 1889.

Q. Bottom, in the center of the frame? *A.* Yes.

Q. What was that awarded for?

A. For superiority of kind of goods exhibited.

Q. And what did you exhibit there? 10

A. Our complete line of manufacture.

Q. That is, including the fire hose? *A.* Yes.

Q. And garden hose? *A.* Yes.

Q. Now, the last is what?

A. Pan-American Exposition at Buffalo.

Q. What was that awarded for?

A. The highest award for superior goods of the character exhibited.

Q. Does that cover fire hose?

A. Yes, sir; hydraulic hose of all kinds. 20

Q. And you got the highest award there? *A.* Yes.

Q. Have you made known to the trade the existence of these medals? *A.* Yes.

Mr. Lindabury—I offer these medals in evidence.

Q. What publication of the fact of the award of these have you made?

A. We published it in all of the journals in which we advertise, trade journals; we have published blotters and other advertising matter in the shape of circulars, 30 and advertised it in our catalogues.

Q. So you have done your part to let the world know you have got these medals? *A.* Yes.

Q. Now, Mr. Wies, have you particularly examined the letters produced here this morning in these various bundles; I mean letters, telegrams and orders, where your name was used incorrectly, for the purpose of ascertaining whether any of the letters were misdirected?

A. Yes.

Q. Directed to the wrong place, I mean by mis-directed, on the face of them? *A.* Yes, sir; I have.

Q. What did you find?

A. There is nothing to indicate that they were not properly addressed.

Q. Are the addresses given on some of them?

A. On some of them.

Q. And nothing to indicate that any of them were
10 directed to the wrong place? *A.* No, sir.

Q. Now, do you have any trouble of that kind since the organization of the defendant company?

A. Considerable trouble.

Q. What is the character of trouble of that kind you have?

Judge Lanning—Objected to.

The Court—He will have to specify.

A. There is confusion in mail matter.

Q. Specify what it is?

20 The Court—The batch of letters that was produced yesterday were instances of misdirection of mail matter?

Mr. Lindabury—They were some of them.

The Court—You may ask whether he produced all those yesterday.

Q. You were yesterday shown, or you produced, a batch of letters that had somehow or other come into your possession wrongly directed, either by the wrong name or to the wrong address, sometimes to the de-
30 fendant company's address, and otherwise erroneously. Now, do they comprise all the errors of the kind that have occurred within your knowledge since the organization of the defendant company?

A. They do not; they simply—

Q. What other errors of that character have occurred, not shown by these letters, of which you have personal knowledge?

Objected to. Objection overruled.

A. These small catalogues have been sent to us by customers who have asked an explanation; people have come in asking prices and asking if there was a concern of the same name; in other words, confusion similar to that to which Mr. Eckert, I believe, testified to yesterday; that has happened frequently in our office, in New York.

Q. What circulars do you refer to, that people would bring in?

A. That circular (indicating). 10

Q. Whose circular?

A. Eureka Rubber Manufacturing Co.'s circular.

Q. Their circular? *A.* Yes.

Q. And make inquiries about something contained in it? *A.* Yes.

Q. Has that occurred more than once? *A.* Yes.

Q. Can you tell how often or how frequently?

A. Several times.

Q. What other confusion did you allude to?

A. We have a salesman located at Atlanta, Georgia, 20 who traveled in Texas; at Brownwood, Texas, there was a bid—we had a bid in ourselves, and the Eureka Rubber Manufacturing Co. had a bid in; there was considerable confusion caused there from the fact that the Brownwood authorities thought—(interrupted)

Judge Lanning—Objected to.

Q. (By the Court)—What information did you get after that had been put in?

A. Simply a telegram or letter from our salesman, asking for an explanation, if there was such a concern 30 as the Eureka Rubber Manufacturing Co.

Q. (By Mr. Lindabury)—After you had put in your bid you got a letter from your salesman, inquiring whether there was another concern?

Judge Lanning—Have you the letter?

The Witness—I have not, but I can produce it.

The Court—The contents of that letter must be proved by the letter itself.

Q. Do you recall anything else? I am asking for something outside of this correspondence put in yesterday.

A. Nothing else.

Q. What about some transaction with the Italian Steamship Line?

A. A salesman who is not in our employ now reported that he went to the pier at the foot of West 34th street, New York City, Italian Royal Steamship Co.,
 10 and he tried to sell some goods to the superintendent, and he handed him a card as representing the Eureka Fire Hose Co., and this party told him that they purchased some goods, and they were not satisfactory—some Eureka goods—and they didn't want to do any more business with the concern; that is what the young man reported to me.

Judge Lanning—Objected to.

The Court—That doesn't relate to the business. It relates to the character of the goods.
 20 He can now only prove what in the course of his business as agent of the complainant has been brought to his observation, as showing the confusion, and on which he had to act.

Q. Has your attention been called to the circulars put out by the defendant since its incorporation? *A.* Yes.

Q. And also to their samples? *A.* Yes, sir.

Q. There was yesterday put in evidence a piece of rubber hose, marked *Exhibit C 32*, having upon it the tri-color. Do you know where that came from? *A.* Yes.

30 *Q.* Whose manufacture is that, if you know?

Judge Lanning—Objected to.

The Court—The witness can answer to this extent. Speaking from your knowledge of the sale of these articles in the trade, can you, from your experience as a selling agent, tell from an examination of that who manufactured it? What I mean is this: suppose you should go into a place where articles of that kind were for

sale, by the sections, and saw that brand on the articles, could you tell from that whose goods they were?

Witness—I should assume it was Eureka Rubber Manufacturing Co., if it was as plain as that.

Q. From what? A. The stamping.

Q. Then, you would judge, as anybody else would, from the stamp? A. Yes.

Q. When did you see that first?

10

A. About a week or ten days ago.

Q. When did you first discover that the defendant company was putting goods with that tri-color on in that way? A. About six months ago.

Q. I mean putting out the goods with the tri-color on in that way? A. This is the only instance.

Q. That is the first that you came across with that on—that particular practice? A. Yes.

Q. Now, had you previously discovered any other use of the tri-color by them? A. Yes, sir.

20

Q. What other use had you previously discovered?

A. A sample of rubber water hose, with the red, white and blue stripes, up and down, instead of longitudinal.

Q. I show you a piece of hose that seems to answer to the kind you have just described, does it?

A. Yes, sir.

Q. What is upon that in the way of colors, first?

A. Red.

Q. A red what?

30

A. A red band, and white band, and a blue band, I should say.

Q. Are they longitudinal, or encircling?

A. Encircling.

Q. And what words are stamped on the various colors?

A. "The Eureka Rubber Manufacturing Co.," on red, "Capital," on white, "Trenton, New Jersey," on blue.

Q. Do you know whether it is practicable to get the color red on rubber any redder than this here?

A. I dont know, sir.

(Witness shown Sample C 30.)

Q. I don't suppose—you don't know about the other colors, either, whether you can get the blue bluer, or the red redder? A. No, sir.

Q. Has your attention been called to the use of the tri-color, longitudinally, upon hose in any other way
10 than on this *Exhibit C 32*?

A. This is the only case I have seen.

Q. I show you now a piece of $\frac{3}{4}$ -inch hose, with the name "The Eureka Rubber Manufacturing Co." on, and ask you whether you had seen that before?

A. Not until to-day.

Q. Didn't you produce this?

A. I didn't open the box; I sent them right over as they were.

Q. I have taken that out of a box containing a num-
20 ber of samples; do you know where that box came from?

A. Yes.

Q. Where? A. Mr. Kingsland.

Q. How did it come here to-day?

A. Mr. Perkins, I suppose.

Q. He brought it over? A. I sent it to Mr. Perkins.

Q. You have not until to-day seen anything like this?

A. No, sir; I did not.

Q. There is on this the same bands of color? A. Yes.

Q. Those are stamped in the rubber?

30 A. Red, white and blue. On the red is stamped "The Eureka Rubber Manufacturing Co."; white, "Buffalo"; "Trenton, New Jersey," on blue.

Q. Have you endeavored to find out what you could respecting the goods that were being put upon the market by the defendant company since its organization?

A. Yes.

Q. And you had not seen any of these until to-day?

A. Not that particular kind; no, sir.

(Marked *Exhibit C 31, Wies.*)

Judge Lanning—We will admit they were made by us.

Mr. Lindabury—Mr. Lanning, at your suggestion, I show you box containing the rest of these samples, some eight or ten in number. Will you inquire of your client whether or not they will admit that those are samples of their manufacture?

Judge Lanning—We will admit that they are all goods that are branded as we brand our goods, and they appear and look as though they had been made by us. We have no reason to believe that they were not. 10

Mr. Lindabury—I will offer in evidence now another piece of $\frac{3}{4}$ -inch hose, from the box of which Judge Lanning spoke.

(Marked *Exhibit C* .)

Q. Mr. Perkins calls my attention to another apparently misdirected letter, dated December 5, 1903, from the Boston Belting Co.? A. Yes. 20

Q. Did you receive that in due course of business?

A. Yes.

Q. The envelope is there? A. Yes.

Q. And how is it addressed?

A. "Eureka Rubber Manufacturing Co., 13 Barclay Street, New York City."

Q. Have you examined the contents? A. Yes.

Q. Does that inform you whether or not it was intended for you? A. The letter was intended for us.

Q. As you judge by the contents? A. Yes. 30

(Marked *Exhibit C* 49.)

Q. Counsel calls my attention to the fact that I was in error in treating this as a single letter. See whether or not there are more than one there. The first seems to be dated December 4th?

A. That is my letter to them.

Q. Then there is only one letter? A. Yes.

Q. The second letter consists of—

A. My reply to their communication.

Q. Did you never until to-day see these samples of defendant's manufacture, with the tri-color stamped on the rubber longitudinally? *A.* No, sir; I did not.

Q. Had you had your attention called earlier to the use of the tri-colors in any other form? *A.* Yes, sir.

Q. How, what form?

A. That sample you had here I sent to Mr. Bailey, in Washington.

10 *Q.* Which sample was that? *A.* I can pick it out.

Q. You mean now sample No. 30? *A.* Yes.

Q. In which the three colors are the same, but encircled? *A.* Yes.

Q. When did you first learn of the use of that by the defendant?

A. It must be a year ago, nearly; a year ago or thereabouts.

Q. When did you first see any of the literature put out by the defendant company advertising its goods or describing its product?

20

A. I should say about a year ago.

Q. I show you a pamphlet entitled "Preliminary Catalogue," having a tri-color on the first page and the last page, and ask you how early in the life of the defendant you saw any of those?

A. I should say about a year ago I saw the first one.

Q. When did the defendant begin business, if you know? *A.* I don't know positively.

Q. When did you first know of its beginning business?

30 *A.* About a year ago.

Q. And you saw this then soon after? *A.* Yes.

Q. I suppose you read them when you saw them?

A. Yes, sir.

Q. On the second page is a statement that "Connected with the company, and active in its organization and management, are men of many years' experience in the manufacture and sale of mechanical rubber goods." Do you know anybody connected with the defendant company who has had such experience? *A.* Mr. Cook.

Q. And anybody else?

A. I have heard of Mr. Lambert, although I never met him until yesterday—until the commencement of this trial.

Q. (Judge Collins) What Mr. Cook?

A. I believe his name is George R. Cook.

Q. (By Mr. Lindabury) The president of the defendant company?

A. Yes, sir; he is marked "president" here.

Q. What experience has Mr. Cook in the rubber business, if you know?

A. I knew him in 1897 or 1898; I called upon him personally—I don't recall what street—at their New York office, the Empire Rubber Manufacturing Co.'s office.

Q. The Empire Rubber Manufacturing Co. was a manufacturer of rubber goods? *A.* Mechanical rubber goods.

Q. Did it manufacture hose? *A.* Yes.

Q. And do you know whether it sold hose of other manufacturers or only its own? *A.* I am not aware. 20

Q. Did it manufacture rubber-lined cotton hose?

A. I cannot answer that.

Q. But it manufactured hose? *A.* A general line.

Q. For fire purposes? *A.* I believe it did.

Q. Did you also correspond with Mr. Cook? *A.* Yes.

Q. With regard to business matters during those years?

A. Yes, sir; and called upon him personally.

Q. Do you know whether it dealt in cotton rubber-lined fire hose? 30

A. I don't know. We met them in competition, but I don't recall as far back as that date.

Q. On the third page is a description of how to tell the Eureka goods: "Our hose will all be branded in two places—about a foot or two from the end of each section. The brands will take the form of three colored rings—red, white and blue—completely encircling the

circumference of the hose. On these colored bands or rings, forming a portion of the cover of the hose, will appear our name and brand. Each section of hose, in addition, will be tied with red, white and blue bands, with our name stenciled in the white band. The same idea will be carried out, as far as possible, in the branding and putting up of all goods of our production. In this manner it will be an easy matter to recognize our goods."

10 Q. Do you know whether or not they put out their goods at that time in the way indicated by that circular?

A. I do not.

Q. When was your attention first called to their letter-heads, containing the piece of hose with the tri-colored bands? A. About two months ago.

Mr. Lindabury—Will you admit that *Exhibit C 31*, which I show you, is a letter on the letter-head used by the defendant company?

Judge Lanning—Yes.

20 Q. When was your attention first called to the letter-heads used by the defendant company, having this tri-color encircling a piece of hose?

A. About two months ago we received—one of our salesmen brought in a letterhead, blank, with no letter written on it.

Mr. Lindabury—Mr. Lanning, perhaps you will admit, to save time, the issuance of this preliminary catalogue?

Judge Lanning—We admit it was issued about a year ago by us.

30 Mr. Lindabury—I will offer that in evidence. Marked *Exhibit C 50*.

Mr. Lindabury—Mr. Lanning, I show you an envelope stamped December 19, 1903, bearing the card of The Eureka Rubber Manufacturing Company, and ask you if you will admit that that is an envelope in use by the defendant company?

Judge Lanning—We admit that we used that envelope for a year or more.

Mr. Lindabury—Do you mean the company has used this envelope ever since it began business?

Judge Lanning—Very shortly after we began business, but not exclusively; other envelopes have been used, but this envelope has been used from a very short time after the defendant company commenced business, along with other envelopes, without the tri-color.

Mr. Lindabury—Along with other envelopes 10 not having the tri-color upon it?

Judge Lanning—Yes.

Envelope offered in evidence and marked *Exhibit C 51*.

Q. Are you familiar with the publication called the "India Rubber World"? A. Yes.

Q. Several copies of that were put in evidence yesterday. I now call your attention to the issue of that publication of December 1, 1903, and ask you whether or not that contains the advertisement of the defendant 20 company? A. It does.

Q. On what page? A. Thirteen.

Q. Does it also contain your advertisement? A. Yes.

Q. On what page is yours? A. Page 6.

Mr. Lindabury—I offer this publication in evidence.

Marked *Exhibit C 52*.

Q. Do you know whether the defendant company supports a sign at its New York office? A. Yes.

Q. Where did you say this office is? 30

A. 55 Warren street.

Q. Did you ever photograph that sign?

A. I did, yes, sir.

Q. When did you do that? A. About a week ago.

Q. I show you a photograph, which I will ask to have marked *Exhibit C 53*. From what point did you take that, looking which way? You have a memorandum on the back. A. Looking west.

Q. (By the Court)—That is a sign projecting over the sidewalk?

A. Yes, hanging sign, projecting from the building.

Q. Out over the sidewalk? A. Yes.

Q. (By Mr. Linrabury)—So that you saw it, walking along the sidewalk, looking straight ahead? A. Yes.

Q. I show you another photograph, which I will ask to have marked *Exhibit C 54*. Was that taken by you?

A. Yes.

10 Q. Looking which way; is it the reverse side of the same sign? A. Yes.

Q. The two sides are the same, I suppose? A. Yes.

Q. I show you another photograph, which I will ask to have marked *Exhibit C 55*. Is that a photograph of the sign? A. Yes.

A. Yes.

Q. Where is that affixed?

A. Affixed on the building 55 Warren street.

Q. Same building? A. Yes.

20 Q. On the lintel or side of the entrance?

A. Against the building.

Q. Brass sign? A. Yes.

Q. You have still another photograph, which I will ask to have marked *Exhibit C 56*; what is that a photograph of? A. Brass sign.

Q. (By the Court)—Where is that sign; are they both in front? A. Yes.

Q. There are two signs?

A. Yes, and one hanging sign.

30 Q. (By Mr. Lindabury)—Do you remember how they are located?

A. Not exactly; I was on a wagon when I took them; they are on the building.

Q. I have here what seem to be some further advertisements by way of pamphlets issued by your company. I show you one with a blue cover, having on the outside "Eureka Fire Hose Co.; is that one issued by your company? A. Yes; Mr. Perkins had it down as blue; it was missing.

Q. Is this the one spoken of the other day as being missing? A. Yes.

Q. Do you remember when this was issued?

A. Probably five years ago.

(Circular marked *Exhibit Circular 48.*)

Q. Now, I show you another catalogue, no part of which I can read, except the heading, "Eureka Fire Hose Co."; when was that issued? A. 1902.

Q. In what language. A. Spanish.

Q. What was it issued for in Spanish? 10

A. For circulation among the West Indies, South America, Mexico and Spanish-speaking countries.

Q. And was it circulated?

A. It was circulated to a considerable extent, and is now being circulated.

Q. Do you know how many of these you have published?

A. 5,000, at least. We may probably have ordered some more lots; we have it electro-plated.

(Marked *Exhibit Circular 49.*) 20

Q. I have now another batch of letters and envelopes, supposed to have been received by your company, and wrongly directed, or rather directed with some imperfection in the name of your company on the address, for 1903.

The Court—It is the same character of evidence that you put in this morning as to other years?

Mr. Lindabury—Yes.

Q. You have the envelopes here, however, which you did not in the previous batches? 30

A. Yes. The first envelope I find is from H. S. Streett, Treasurer, City of Summit, N. J.

Q. How is that directed?

A. "Eureka Hose Co., 11 Barclay St., New York City."

Q. Is that your present number, 11 Barclay street?

A. 13 is our number.

Q. The second is from whom?

A. March & Newcomb, Litchfield, Connecticut.

Q. How is that directed?

A. "Eureka Hose Co., 13 Barclay St., N. Y. City."

Q. That is your correct street number? *A.* Yes.

Q. The next is directed how?

A. "Eureka Hose Co., New York City."

Q. Is it frequent or not for you to get letters with no street address on? *A.* Very frequent.

10 *Q.* And from whom is this?

A. "The Plume & Atwood Mfg. Co., Waterbury, Conn."

Q. That is a very large manufacturing firm and well established? *A.* Very large.

Q. The next is from whom?

A. H. B. Vondersmith, Chief Engineer, Lancaster, Pa., Fire Department.

Q. How is that addressed?

A. "Eureka Hose Co., New York," and then it has
20 in the left-hand corner, "Eureka Fire Hose Co."

Q. The next is from whom?

A. The Plume & Atwood Mfg. Co., Waterbury, Conn.

Q. How is that addressed?

A. "Eureka Hose Co., New York, N. Y."

Q. The next?

A. From John Boyd, New York City, addressed
"Eureka Hose Co., 15 Barclay St., City."

Q. The next?

30 *A.* From the same party, addressed "15 Barclay St., City."

Q. Who is the next from?

A. Clinton Jones, Justice of the Peace, Johnsonburg, Pa.

Q. How is it addressed?

A. "Eureka Hose Co., 13 Barclay St., New York, N. Y."

Q. The next is what?

A. From Lawrence Turnure & Co., New York City, addressed, Eureka Hose Co., 13 Barclay St., New York City." The next is from Shawnee Steam Fire Engine Co., No. 3, Columbia, Penna., addressed "Eureka Hose Co., 13 Barclay street, New York."

Q. Those that I have called your attention to so far all been envelopes? A. Yes.

Q. (By the Court)—You don't produce the letter inside for any purpose? Those envelopes you referred to all contained letters intended for you in the course of your business? 10

A. Yes; that is correct.

Q. So only the envelope is now produced?

A. Yes.

Q. (By Mr. Lindabury)—I now call your attention to a letter, which is the next in the file, and ask you who that is from?

A. Landis Tool Company, Waynesboro, Pa.

Q. And how is that addressed?

A. "Eureka Mfg. Co., Jersey City, N. J." 20

Q. (By Judge Collins)—That refers to some business of your company? A. Yes.

Q. (By Mr. Lindabury)—The next is an envelope from whom? A. The Phoenix Iron Co., Philadelphia.

Q. How directed?

A. "Eureka Fire Hose Manfg. Co., New York City."

Q. The next is an envelope from whom?

A. H. L. Childs & Co., Pittsburg.

Q. How addressed?

A. "Eureka Fire Hose Mfg. Co., New York, N. Y." 30

Q. How is it first written.

A. "Eureka Fire Hose Mfg. Co., New York, N. Y.," and "Fire Hose" is inserted over the top, between "Eureka" and "Mfg."

Q. Addressed how? A. "New York, N. Y."

Q. The next is an envelope from whom?

A. German Hospital and Dispensary Association of Hudson county.

Q. How is it addressed?

A. "Eureka Rubber Hose Co., Wilkinson Ave., Jersey City."

Q. And that is from your own town? *A.* Yes.

Q. The next is an envelope from whom and how addressed? *A.* Moe, Levy & Co.

Q. How addressed?

A. "Eureka Rubber Co., 13 Barclay Street, City."

Q. The next is an envelope from whom?

10 *A.* Remington Typewriter Company, New York.

Q. How addressed?

A. "Eureka Rubber Co., 13 Barclay St., City," containing a bill made out in the same way and intended for us.

Q. The next envelope is what?

A. New Jersey Hospital and Ambulance Supply Company, Jersey City. It is addressed "Eureka Rubber Company, Wilkinson & Arlington Aves., Jersey City, N. J."

20 *Q.* Is that the location of your factory? *A.* Yes.

Q. The next is what?

A. A postal card of H. Ladage, Camden, N. J., addressed "Eureka Rubber Co., Barkley st New York," with the post office box in pencil put on. Remington Typewriter Company, an envelope addressed "New York," "Eureka Rubber Co., 13 Barclay Street, City." Next is an envelope and letter of the International Rubber and Mfg. Co., Jersey City, N. J., addressed "Eureka Rubber Co., Greenville, N. J."

30 Judge Collins—Greenville is the local name of that part of Jersey City?

Witness—Yes. The next is an envelope, Kiamesha Lake House, Kiamesha, New York, addressed "Eureka Rubber Co., Jersey City, New Jersey." The next is an envelope of the United and Globe Manufacturing Companies, Trenton, N. J., addressed "Eureka Rubber Co., 13 Barclay St., New York City," and contained orders for

our hose by our numbers. Next is a letter of I. F. Goldenhorn, Jersey City, N. J., addressed "Eureka Rubber Co., Greenville, City."

Q. (By Mr. Lindabury) Is your section called Greenville sometimes? A. Yes.

Q. What is next?

A. The next is an envelope from Bradstreet's, addressed "Eureka Rubber Co., 13 Barclay." Next is an envelope from 602 Warren street, Hudson, N. Y., addressed "Eureka Rubber Fire and Garden Hose, 13 Barclay St., New York, N. Y.," with a letter addressed the same way. There is also letter and envelope of Geo. F. Hyland, 41 Pacific St., Stanford, Conn., envelope and letter both addressed "Eureka Rubber Co., 13 Barclay St., N. Y.," on it.

Q. I noticed the use of the word "rubber," the wrongful use of the word "rubber," as a part of your title, with great frequency in this correspondence in the present year. Did that occur with any such frequency before the organization of the defendant company? 20

A. Not to my knowledge, no.

Q. I show you a letter here upon one of your letterheads. Can you tell me whether or not it is your letterhead? A. It is our letterhead.

Q. How long have you used it? A. Ten years.

Q. And this is the only one you use? A. No, sir.

Q. What others do you use?

A. We have a letterhead arranged with this same plan, this same letterhead, and this (indicating) not in colors. 30

The Court—You can put in specimens of them.

Q. Are those two the only kind you use?

A. Yes, from the New York office.

Mr. Lindabury—I offer the heading in evidence.

(Marked *Exhibit C 57.*)

Q. I show you a batch of envelopes and letters which were inquired about last evening, as I understand?

A. Yes, sir.

Q. But which haven't been marked. Do you recognize them as the ones you had last night? A. Yes.

Mr. Lindabury—I offer all these in evidence.

(Batch identified by the witness yesterday marked *Exhibit C 58*.)

(Batch identified by the witness to-day marked *Exhibit C 59*.)

Q. I show you these Certificates of the Republic of
10 France, conferring the Legion of Honor on John Van
D. Reed. Is this another one of those testimonials that
you have kept locked up? A. No, sir.

Q. Is it the certificate accompanying the medal itself
that is framed under glass, in the one I show you?

A. It is the original certificate.

Q. And Mr. Reed was your president? A. Yes.

Q. And represented you at the exposition?

A. President or treasurer at that time.

Q. He represented you at the exposition? A. Yes, sir.

20 Q. In the exposition of your goods? A. Yes, he did.

Q. And have you published the fact of this award?

A. Yes.

Q. How?

Judge Lanning—Objected to.

The Court—I will hear you on the bearing
of it.

Q. You advertised it? A. Extensively.

Mr. Lindabury—I will offer it in evidence. It
need not be marked.

30 I also offer now the samples of defendant's
rubber hose produced awhile ago. They have
been tagged and will be marked from No. 30
to 63.

Adjourned to February 24, 1904, at 10:15 A. M.

Continuation of examination in the above-entitled cause, before Hon. John R. Emery, Vice-Chancellor, at Chancery Chambers, Newark, N. J., on Wednesday, February 24th, 1904, at 10:15 A. M.

Appearances: Randolph Perkins, Esq., for complainant; Hon. William M. Lanning and John V. B. Wicoff, Esq., for defendant.

George A. Wies, recalled for further

Cross-examination by Judge Lanning: 10

Q. Mr. Wies, how long have you been connected with the complainant company?

A. About twenty years.

Q. Where are you located, at the factory in Jersey City, or at the New York office?

A. New York office.

Q. Have you been at that office during the whole of the twenty years? A. Yes, sir.

Q. Has that office been in the same place during the twenty years? A. Yes, sir. 20

Q. At No. 13 Barclay street? A. Yes, sir.

Q. On your direct examination you mentioned a number of parties, companies engaged in the manufacture of hose, fire hose; were all of the companies that you mentioned engaged in the manufacture of cotton rubber-lined hose? A. Not all of them.

Q. Will you name now such companies in the United States as you can recall which are engaged at the present time in the manufacture of cotton rubber-lined hose?

A. The Bowers Rubber Company, San Francisco; 30
Cleveland Rubber Works, Cleveland, Ohio; B. F. Goodrich Company, Akron, Ohio; Boston Woven Hose and Rubber Company, C. Callahan Company, Boston; Cornelius Callahan, Canton Junction; The Fabric Fire Hose Company.

The Court—Where is their main office?

Witness—New York City. There may be some other mechanical companies manufacturing hose that I am not aware of.

Q. Can you name any other companies or parties who have been engaged in the manufacture of cotton rubber-lined hose within the last three years who are not now engaged in it? *A.* No, sir; I cannot.

Q. Do you know whether the Empire Rubber Manufacturing Company of Trenton is engaged in such manufacture? *A.* Not personally I do not.

Q. Do you know whether the Eureka Rubber Manufacturing Company, of Trenton, is engaged in such
10 manufacture? *A.* No, sir; I do not.

Q. In the list that you gave you omitted your own company. Of course, you meant to include it?

A. Yes, sir.

Q. Does your company manufacture anything outside of cotton rubber-lined hose? *A.* Yes, sir.

Q. What?

A. Manufactures linen hose, tubular fabric.

Q. You mean linen rubber-lined hose?

A. Rubber-lined and unlined hose, tubular fabrics of
20 all descriptions.

Q. What do you mean by tubular fabrics?

A. I mean a fabric woven or knit in a tube form.

Q. You speak of fabrics woven and knit. Is there a distinction between woven fabrics and knit fabrics?

A. Yes, sir.

Q. Do you make both kinds? *A.* Yes, sir.

Q. Is your fire hose, cotton rubber-lined fire hose, both knit and woven? *A.* Yes, sir.

Q. Something has been said in this case about separable jackets; is your woven hose sometimes composed
30 of separable jackets? *A.* Yes, sir.

Q. Is your knit hose sometimes composed of separable jackets? *A.* Not knit hose, altogether, no, sir.

The Court—What do you mean by “knit hose, altogether”?

Witness—Knitting machines, like stockings.

Q. Is your knit hose ever composed of separable jackets?

A. We make knit hose in single—by drawing one jacket over the other; that is what you mean, what is known in the trade as a jacket hose.

Q. I say do you put upon the market, make and put upon the market, knit hose composed of separable jackets? *A.* Yes, we do.

Q. What is the difference between woven hose and knit hose?

A. Well, woven hose is woven on a loom, and knit hose is made on a knitting machine. 10

Q. Woven hose is woven according to the same process as carpets or cloth, is it not, in general?

A. No, sir; our machinery is circular.

Q. Isn't there a warp and woof?

A. Yes; I imagine there are.

Q. Now, then, in knit goods, there are interlocked loops made by a machine in the same way as in the knitting of a stocking, isn't that true?

A. Yes, sir; that is the way I understand it.

Q. So that knit goods can be unravelled, while woven goods cannot be, is that not true? 20

A. I have never tried to unravel knit hose.

Q. You don't know that?

A. Personally I do not.

Q. You named a little while ago all of the kinds of goods that your company makes and puts upon the market, did you?

A. Yes, sir; that is, I specified what we make.

Q. Do you know whether the Gutta Percha and Rubber Manufacturing Company makes cotton rubber-lined hose? *A.* Of New York? 30

Q. Yes. *A.* I do not, no, sir.

Q. The Boston Belting Company? *A.* I do not.

Q. The United & Globe Rubber Company?

A. I do not.

Q. The Joseph Stokes Rubber Company of Trenton?

A. I do not.

Q. The Revere Rubber Company?

A. I believe they do.

Q. You didn't name them a while ago? *A.* No.

Q. The New York Belting & Packing Company?

A. I don't know, sir.

Q. The New Jersey Car Spring & Rubber Company?

A. I don't know whether they do or not.

Q. The Manhattan Rubber Manufacturing Company?

A. I believe they do.

Q. The Empire Manufacturing Company of Lock-
10 port, New York? *A.* I don't know.

Q. The Diamond Rubber Company?

A. They do, yes, sir.

Q. Are you acquainted with a brand of fire hose
known in the market as the "Maltese Cross"?

A. Yes, sir.

Q. What kind of hose is that?

A. It is what is known as a rubber fire hose.

Q. Not cotton jackets? *A.* No, sir.

Q. Is it a well known brand in the market?

20 *A.* Yes, sir.

Q. Do you know who manufactures it?

A. The Gutta Percha & Rubber Manufacturing Com-
pany.

Q. Is that brand generally known by the name of
"Maltese Cross"? *A.* Yes, sir.

Q. Is it so known amongst dealers and buyers and
the public generally, who use that kind of hose?

A. So far as I know, it is, yes, sir.

Q. Is it known by any other name?

30 *A.* No, sir, it is known by its brand.

Q. Do you know a brand of hose known as the
"Baker Fabric"? *A.* I have known of it, yes, sir.

Q. You have seen it?

A. I have seen some of it, yes, sir.

Q. Is it widely known in the market?

A. No, sir, I don't believe it is to-day.

Q. Has it been in the past?

A. It used to be in the market.

Q. That was the name given to a special brand, was it? A. Yes, special particular brand.

Q. Do you know who made it?

A. I don't know the name of the concern, no, sir.

Q. Was it distinguishable from other brands?

A. Yes, it was.

Q. Was it a cotton hose rubber lined?

A. Cotton hose rubber lined.

Q. Was that brand known by any other name?

A. Not to my knowledge. 10

Q. Do you know a brand by the name of "Arrow"?

A. I have heard of it, but I don't know of it.

Q. Or "Keystone"? A. I know "Keystone."

Q. What is that, a cotton rubber-lined hose?

A. Cotton rubber-lined hose, yes, sir.

Q. Is it generally known in the market by that name?

A. It is known as a wax and gum hose, more frequently.

Q. Is it a wax and gum treated hose? A. Yes, sir.

Q. I don't think you have explained in your direct testimony anything about wax and gum treated hose. What do you mean by that? 20

A. It is simply a cotton hose treated with a preparation of paragum and paraffin wax.

Q. Do you know who makes the brand known as the "Keystone"? A. Yes, Fabric Fire Hose Company.

Q. By what name is that brand generally known in the market?

A. I should say Keystone wax and gum treated.

Q. Do you know of a brand by the name of "Unique"? A. I know of it, yes, sir. 30

Q. Who makes it, do you know? A. Yes.

Q. Who?

A. The same concern as makes the Keystone.

Q. Is that a cotton hose? A. Yes.

Q. Rubber lined? A. Yes.

Q. Is it generally known in the market by that name?

A. Yes.

Q. Is it known by any other name than that?

A. Wax and gum, I have heard it expressed that way, and nothing else, Unique wax and gum.

Q. Is it known by any other name or names than "Unique" or "Unique wax and gum"?

A. Not that I have ever heard.

Q. Do you know a brand of fire hose in the market known by the name of "Peerless"? *A.* Yes, sir.

Q. Is that a cotton rubber-lined hose?

10 *A.* It is a cotton double jacket hose, yes, sir.

Q. Is it generally known in the market by that name?

A. It is known in the market as "Eureka Peerless."

Q. "Eureka Peerless"? *A.* Double jacket hose.

Q. Is it also known as the "Peerless"?

A. I suppose it is known as Peerless.

Q. Is it known in the market by the single name "Peerless"? *A.* Not to my knowledge, no, sir.

Q. Is it not made by your company? *A.* Yes.

Q. Do you not advertise it by the single name "Peer-
20 less"? *A.* Possibly we do.

Q. Do you not generally advertise it by the name Peerless in quotation marks? *A.* Possibly we do, yes.

Q. Have you any advertisements that you have used, in which you have associated with it the word "Eureka," calling it "Eureka Peerless"? *A.* I believe we have.

Q. Can you produce any? *A.* I think I can.

Q. Can you turn to any now?

A. If they are here, I think I can. The hose is branded "Eureka Peerless" when it is put out.

30 *Q.* Is not the word "Peerless" in quotation marks?

A. I wouldn't be positive about the brand.

Q. Have you not copyrighted the name "Peerless"?

A. Yes, sir.

Q. Have you copyrighted anything as "Eureka Peer-
less"?

A. I cannot swear to that; I don't know.

Q. Don't you know you have not?

A. I do not; no, sir.

Q. Have you all of your copyrights, or certificates of your copyrights, with respect to this brand, that have ever been issued to you in evidence in this case?

A. I believe they are; yes, sir, but they have never been under my personal charge.

Q. I understand you to say that these different brands whose names I have given you are known in the market exclusively by those names, except that you modify that statement in reference to the use of the word "Peerless," am I right?

A. No, sir; I don't think you are. 10

Q. In what respect am I wrong?

A. I am simply giving you my opinion as I know the hose.

Q. That is what I am asking for—your knowledge.

A. I have given you my knowledge.

Q. And the statement that I have made is true, is it, so far as your knowledge goes? *A.* Yes.

Q. That is to say, that these different brands, whose names I have given you, are known in the market exclusively by those names and none other? 20

A. They are known exclusively by their brands and by the company, naturally, who makes them.

Q. Who did you say manufactures the brand known by the name of "Maltese Cross"?

A. Gutta Percha Rubber Manufacturing Company.

Q. Have you ever known any advertisement to be made, or any name of that brand to be used in this form: "The Gutta Percha & Rubber Manufacturing Company's Maltese Cross"? 30

A. I do not; no, sir.

Q. Will you give us any form of combination of the name of the manufacturer with the name "Maltese Cross" that you have ever seen in any advertisements?

A. I am not familiar with the methods of the Gutta Percha Company's advertisements.

Q. Will you give us any form of combination of the name of the Gutta Percha & Rubber Manufacturing

Company with the name of the brand "Maltese Cross," which you have heard used in the market?

A. I have heard it as "Maltese Cross manufactured by the Gutta Percha Company," or "Gutta Percha & Rubber Manufacturing Company."

Q. Now, then, have you ever heard any other combination of those names than what you have just given?

A. I have never; no, sir.

Q. You have said that the Arrow and Keystone and
10 Unique brands were all manufactures of the Fabric Company's?

A. Not the Arrow; I wasn't positive of the Arrow.

Judge Lanning—Strike out the word "Arrow."

Witness—Unique and Keystone; yes.

Q. Have you ever seen in any advertisement a combination of the name of the Fabric Fire Hose Company with either the brand name Keystone or Unique?

A. I don't recall seeing any; no, sir.

20 Q. Have you ever known any combination of such names; that is, the name of the manufacturer, being the Fabric Fire Hose Company, and the name of the brand, being either Keystone or Unique, used in the market?

A. I have not; no, sir.

Q. Do you know a brand of fire hose in the market known as "White Anchor"?

A. Yes; I have known of it.

Q. Is it a cotton rubber-lined hose?

A. No; it is a rubber-lined hose.

30 Q. Has no cotton jacket?

A. No, sir; it is made of canvas, duck and rubber.

Q. Do you know who manufactures it?

A. The B. F. Goodrich Company, Akron, Ohio, used to make it.

Q. Is that brand known in the market by the name "White Anchor"? A. Yes, sir.

Q. That name, I suppose, is stamped upon the article, isn't it?

A. I saw a section of it the other day in New York City that had a white anchor on it. That is what made me distinguish it. I don't know whether their name appeared or not.

Q. Have you ever seen any advertisement containing a combination of the name "B. F. Goodrich Company" with the name "White Anchor"?

A. I have never taken notice of any such advertisement; no, sir.

Q. Have you ever known of any such combination in the market? *A.* No, sir. 10

Q. In the market, so far as you know, the name used is exclusively "White Anchor"?

A. In talking of that particular brand of hose; yes, sir.

Q. Do you know a company by the name of The Peerless Rubber Manufacturing Company? *A.* Yes, sir.

Q. Where does it do business? *A.* In New York.

Q. Does it put upon the market a cotton rubber-lined hose? *A.* I cannot swear positively to that. 20

Q. How long has that company been in the market doing business? *A.* As long as I can remember.

Q. All of the twenty years that you have been with the complainant company?

A. As long as I can remember.

Q. When did your company first manufacture the brand of hose that it calls "Peerless"?

A. I cannot recall the exact date, but it is a great many years ago.

Q. Since you entered its employment? 30

A. I cannot swear to that, sir.

Q. The Peerless Rubber Manufacturing Company of New York is older than your company; is it not?

A. I don't know whether it is or not.

Q. Do you not know that your company manufactured this brand, which it calls the "Peerless," long after the Peerless Rubber Manufacturing Company of New York entered into business?

A. I do not; no, sir.

Q. Do you not know that the Peerless brand of fire hose made by your company was made and the name given to that brand after you entered the employ of the company? *A.* No, sir; I cannot swear to that.

Q. Do you know when the name "Peerless" was copyrighted by your company?

A. I don't know the date; no, sir.

Q. Where is the factory of the Peerless Rubber Manufacturing Company?

A. I believe it is given as New Durham, New Jersey.

Q. In your direct examination you said that their goods were known as the "Peerless," I believe?

A. Yes, sir.

Q. Did you mean to indicate that that would include the brand which your company puts on the market, known by the name of Peerless?

A. So far as I know, the Peerless Rubber Manufacturing Company have never made any cotton rubber-lined fire hose.

Q. So that you did not mean that that company—the goods of that company known by the name "Peerless" would include your brand known by the name of "Peerless"? *A.* I have never known—

Q. You didn't mean to include it, did you? *A.* No.

Q. You say you didn't mean to include it, because, as I understand you, the manufactures of the Peerless Company are rubber goods solely, while your brand of Peerless goods is cotton rubber-lined; am I right?

A. I am not familiar as to what the Peerless Rubber Manufacturing Company make; so far as our manufactures are concerned, I am.

Q. In your direct examination on page 241, you were asked this question: "What other companies make rubber-lined cotton hose that is sold in the American market?" *A.* Bowers Rubber Co., San Francisco." Then you were asked a series of questions of the same sort, and on page 242 you were asked: "Any others?" and

you answered: "Peerless Rubber Manufacturing Co." Now, do you say that you were in error when you declared in your direct examination that the Peerless Rubber Manufacturing Company was a manufacturer of cotton rubber-lined hose?

A. They possibly may be, but I thought they might at that time; they possibly make or may be manufacturing cotton hose.

Q. Then you don't know whether they are manufacturers of cotton rubber-lined hose or not, do you? 10

A. No, sir.

Q. How is it that on your direct examination you said, without qualification, that they were such manufacturers? *A.* I thought they were.

Q. What made you think so then, and what has led you to change your mind since or be uncertain about it?

A. Because they quote on cotton rubber-lined hose.

Q. Is that the reason that you said on your direct examination, without qualification, that they were manufacturers of cotton rubber-lined hose? 20

A. Yes, sir; that was my reason.

Q. Why don't you, then, still say so?

A. I have said so, but I qualified my answer, that they possibly may make cotton rubber-lined hose.

Q. And you further qualify it now by saying you don't know anything about it?

A. Yes; I don't know whether they are making it or not.

Q. What knowledge have you as to whether any of these other companies you named on your direct examination are manufacturers of cotton rubber-lined hose? 30

A. The fact that I have been in most of the factories.

Q. Have you been in the Bowers Rubber Company's factory in San Francisco? *A.* I have; yes, sir.

Q. And are you able to say, from personal knowledge, that they are manufacturers of cotton rubber-lined hose? *A.* Yes, sir; I am.

Q. Have you been in the factory of B. F. Goodrich, Akron, Ohio? *A.* I have; yes.

Q. Of the Cleveland Rubber Works, Cleveland?

A. No.

Q. Do you know, of your personal knowledge, that they are manufacturers of cotton rubber-lined hose?

A. I know from correspondence that I have received from them that they are.

Q. Do you know that they are engaged in the manufacture of cotton rubber-lined hose at the present time?

A. Yes.

10 *Q.* At the present time? *A.* Yes.

Q. Don't you know that they discontinued it?

A. I do not.

Q. Don't you know that they discontinued that manufacture about a year ago? *A.* I did not.

Q. Have you any knowledge on the subject at all?

A. That they discontinued? No.

Q. Have you had any correspondence with them within the last year?

A. Not within the last year, I don't believe.

20 *Q.* Is your knowledge as to their manufacture based wholly on what you have learned from correspondence with them? *A.* Yes, sir.

Q. How long since you had any correspondence with them?

A. I cannot say exactly; it may be prior to a year.

Q. Don't you know that their business has been absorbed by the Fabric Fire Hose Company?

A. I do not; no, sir.

Q. Haven't you so heard? *A.* No, sir; I have not.

30 *Q.* Have you been in the manufactory of the Revere Rubber Company of Boston? *A.* Yes, sir.

Q. Do they manufacture cotton hose?

A. I never saw any hose manufactured there.

Q. You never did? *A.* No, sir.

Q. You have no knowledge as to whether they manufacture cotton rubber-lined hose?

A. I know they used to manufacture it.

Q. How long ago? *A.* Several years ago.

Q. How do you know it?

A. By being told that they were manufacturing it by Mr. Williams, the general manager of the company.

Q. When? *A.* It may have been three or four years ago.

Q. You have no personal knowledge as to whether they are engaged in such manufacture now or not?

A. I have none to-day.

Q. You don't know of any of their goods that are on the market to-day, do you? 10

A. Yes, I know of their goods.

Q. Cotton rubber-lined? *A.* Yes.

Q. What brand?

A. I think they have a brand "Beacon" and "Ulysses."

Q. Is that Beacon a rubber-lined hose?

A. Yes, a double-jacket hose.

Q. Is it a pure rubber hose?

A. No, sir; it is not.

Q. Have you been in the factory of the Boston Belting Company? *A.* Yes. 20

Q. New Jersey Car Spring Company? *A.* Yes.

Q. New York Belting and Packing Company?

A. No, sir.

Q. What do you know about their manufactures?

A. I know they are a large concern. I don't know anything personally about what particular line of goods they manufacture.

Q. Do you know that they put on the market cotton rubber-lined hose? *A.* Yes, sir; I do. 30

Q. With regard to the Baker Fabric brand of hose, did you say that you knew who made that brand, or not?

A. I don't know who made it. The Gutta Percha Company sell it, but I don't believe they make it.

Q. I understood you to say that this brand of Baker Fabric hose is not much used, am I right?

A. It is not much used, to my knowledge, to-day.

Q. How long since it was much used?

A. I don't recall to what extent it has been used. We rarely hear of it now. Some years ago we did hear of it.

Q. And I understand you to say that it was put on the market by the Gutta Percha Company?

A. Yes, that is correct.

Q. I think you spoke of them at one time as your chief competitor—on your direct examination as your chief competitor in business? *A.* Yes, I did.

10 *Q.* Did they deal largely in this brand of Fabric Fire Hose at any time, Baker Fabric, I mean?

A. I think their business was mostly with Maltese Cross.

Q. Has your company manufactured cotton rubber-lined hose during the whole of the twenty years you have been with them? *A.* Yes, sir; they have.

Q. We have had used here in testimony of witnesses, frequently, I think, the expression, "solid woven hose"; what does that mean?

20 *A.* It means a hose composed of two or more plies, woven simultaneously in the machine, solidifying the jackets together in one operation.

Q. Can you tell us whether the solidifying process consists in carrying threads from one ply into the next adjoining ply and interlocking it with that next ply?

A. That is what I should understand, but I am not familiar enough with the manufacturing part of it to testify.

30 *Q.* Can you tell us whether the solidifying process is one which carries every thread into the next adjoining ply and interlocking it there, or only occasional threads?

A. I cannot answer that question.

Q. You say that the fabric known as the solid woven hose is made solid by the interlocking of the threads between the different plies. If that be so, if you were to take a knife and separate the different plies, you would destroy the jacket, would you not?

A. Not in the Eureka and Paragon hose, no.

Q. Would you generally?

A. I am not qualified; I cannot testify to that.

Q. Would you injure the Eureka and Paragon hose by separating the plies with the knife?

A. Not to any practical extent, no.

Q. Are they solid woven? *A.* Yes, sir.

Q. And are they made solid by this interlocking process? *A.* Yes.

Q. If you cut the thread that runs from one ply to another, don't you impair its strength or impair its durability? *A.* Not necessarily. 10

Q. You say "not necessarily." How can you do that so that it will not impair its strength or durability?

A. The fabric is so constructed that it is capable of separation into plies.

Q. If that be so, why are they solid woven; why are they not made as separable jackets?

A. Because the advantage gained is that when the hose is under pressure every thread in it is getting an equal strain, while in the jacket hose one jacket has to be made large enough to go over the other, or small enough to go inside of the other, and, naturally, you don't get an equal tension. 20

Q. And isn't that also true of the other sort of manufacture? *A.* Which sort do you refer to?

Q. The separable?

A. No, sir; not in Eureka and Paragon.

Q. Is it not true of the solid woven?

A. I don't know what you mean by solid woven; I say Eureka and Paragon are solid woven hose; I don't know of any other solid woven hose. 30

The Court—Those are the only two brands of solid woven hose you make?

Witness—Yes; that I am familiar with; we make Red Cross now, a two-ply hose.

Q. How long has your company been making what you call your solid woven hose, known as "Paragon"?

A. Since I have been connected with them.

Q. And how long that solid woven hose which you know as "Eureka"? *A.* The same period.

Q. How long have the names "Paragon" and "Eureka" been applied to these manufactures?

A. From what I know of our records, since the company was started in 1875.

Q. Did you have any hose that you branded "Eureka" twenty years ago? *A.* Yes.

Q. Did you have any hose that you branded "Paragon" twenty years ago? *A.* Yes.

Q. So that those goods, as I understand you, have been made for the last twenty years in precisely the same way and woven in precisely the same manner; do you mean to say that?

A. They have been up to within a few years ago, when Mr. Stowe invented some new improvements which he now puts in the Eureka and Paragon hose.

Q. You did make a change a few years ago in what you call your Paragon, didn't you? *A.* Yes; we did.

Q. It was a change in the process of weaving the jacket?

A. Absolutely no change in the process of weaving.

Q. What was the change?

A. It was simply adding an additional ply—a smooth interior ply—to get a smooth water-way and do away with friction when the hose was under pressure.

Q. And you also made a change of a similar kind in the brand that you designate "Eureka," didn't you?

A. I don't call it a change; I call it an improvement.

Q. You did call it a change awhile ago?

A. It is an improvement.

Q. Isn't an improvement a change? *A.* Yes.

The Court—Get what was done.

Q. How many years ago did you make that improvement in the Paragon?

A. I should say it is within the last two years.

Q. How many years ago did you make the same improvement in the Eureka? *A.* Quite recently.

Q. Later? *A.* Yes.

Q. How recently?

A. I should say within a year.

Q. Is the improvement you made in the Eureka of the same character as that made in the Paragon?

A. Precisely.

Q. Can you give any reason why the improvement was not made in the Eureka at the same time it was made in the Paragon?

A. Because it necessitated certain changes to machinery which couldn't be made all at one time.

Q. You are now making an addition to what you call a solid woven hose—hose consisting of separable jackets, aren't you? *A.* Yes.

Q. That is, they are separately woven and slipped over one another? *A.* Yes.

Q. What is the greatest number of separable jackets you have in any hose that you make?

A. Mostly two; very rarely three.

Q. How long since you commenced to manufacture hose composed of separable jackets?

A. Almost as long as I have been with the company; almost as long as my connection with the company.

Q. That is rather indefinite; can you be more definite? *A.* I should say about twenty years.

Q. Twenty years is the time you have been there?

A. Yes.

Q. Do you mean to say that your company was manufacturing separable jackets when you first went there?

A. So far as I know, they were.

Q. Are you able to assert that they were?

A. I think they were; yes.

Q. How long has your company been manufacturing knit hose?

A. Fifteen years, at least, I should say, if not longer.

Q. Who first made knit hose in this country?

A. I believe a man by the name of Sibley, but I wouldn't be positive that he was the first one who made it.

Q. Was it not first made and put on the market by the American Fire Hose Company?

A. That is Mr. Sibley's concern.

Q. And after that company had made it and put it on the market your company undertook to make it, and did make it?

10 *A.* I believe so; I guess that is the way it was.

Q. What companies in this country made the separable jackets before your company?

A. I cannot testify as to any who made it before we did.

Q. Do you mean to say that your company was the first that made the separable jackets?

A. So far as my knowledge goes, yes.

Q. Didn't the Boston Woven Hose Company make separable jackets before your company?

20 *A.* I cannot testify that they did make them before we did.

Q. You don't know? *A.* No, sir; I do not.

Q. Don't you know that the Boston Woven Hose Company owned the first looms for the manufacture of woven hose in this country? *A.* No, sir; I do not.

Q. Do you know who first made what is called the wax and gum treated hose in this country?

A. I don't know who first made it; no, sir.

Q. It wasn't your company, was it? *A.* No, sir.

30 *Q.* Don't you know it was the Fabric Fire Hose Company?

A. I believe it was a man named Gillespie, who afterwards formed the Fabric Fire Hose Company.

Q. Has your company a brand of hose that it designates as wax and gum treated hose? *A.* Yes.

Q. How long have you been putting that on the market? *A.* Two or three years.

Re-direct by Mr. Perkins:

Q. Mr. Wies, does not your company manufacture belting? *A.* To a small extent now; yes, sir.

Q. Rubber hose? *A.* Yes.

Q. Couplings? *A.* Yes, sir.

Q. (By the Court)—What kind of couplings, metal?

A. Bronze or brass, attached to fire hose.

Q. Only hose couplings, I suppose? *A.* Yes.

Q. (By Mr. Perkins)—Nozzles?

A. Yes; everything in connection with the brass goods used for fire department use. 10

Q. Do you profess to be familiar with the various methods of advertisement used by the other manufacturers of hose? *A.* No, sir; not at all.

Q. When you testified as to their method of advertising, upon what was your knowledge based?

A. Simply trade journals, as I happened to glance over them.

Q. So they may advertise in other manners than you have described? *A.* Yes. 20

Q. How long have you known the Peerless Rubber Manufacturing Company? *A.* For twenty years.

Q. Have you ever been in their factory?

A. Never, no, sir.

Q. To your knowledge, do they put on the market any cotton rubber-lined hose known by the brand "Peerless"? *A.* Not to my knowledge.

Q. You don't pretend to be an expert in the methods of manufacturing cotton rubber-lined hose made by your company? *A.* No, sir, I do not. 30

Q. When you testified as to the character of solid woven hose, upon what was your testimony based?

A. Generally my own knowledge that I have from circulars and printed matter we have gotten out.

Q. Who is the man who can give the expert testimony on that subject? *A.* Mr. Stowe.

Q. Can you describe more particularly what improvement was made in Paragon and in the Eureka brand?

A. Within the last two or three years.

The Court—Hasn't he said that?

Witness—Is it the Paragon hose, before this improvement it was a two-ply hose. This smooth interior ply is inserted next to the inner ply. It makes a perfectly smooth surface, so that the rubber lining gives a smooth water way, using a 16 stop guage tube, and takes away that friction and adds about 25 per cent. to the strength of the hose.

10 Q. (By the Court)—What is that inner lining?

A. The interior lining is rubber, and in the Eureka hose, which was a three-ply hose, the additional ply makes a four-ply hose.

Q. The inside being rubber?

A. Yes, and then lined with a tube of rubber.

Q. Instead of four ply?

A. Yes, instead of the four-ply. The four-ply is one solid mass, then there is a tube of rubber inserted.

Q. (By Mr. Perkins)—Three of which plies are
20 separable?

A. Yes, three are separable. Three plies are separable in Eureka and two in Paragon. The interior ply is not separable, but Mr. Stowe can testify to that.

Q. Has your company not been putting on the market separable ply hose since 1875?

A. As far as I know, they have.

Re-cross by Judge Lanning.

Q. You have said on re-direct examination that your
30 company manufactures belting. Your company does not manufacture a yard of belting containing any rubber in it, does it? A. Never has, to my knowledge.

Q. The belting that you manufacture is woven belting? A. Woven cotton belting, yes.

Q. Without any rubber in it?

A. There has been some of it coated with rubber.

The Court—By you?

Witness—It has been coated for us.

Q. You have also said on re-direct examination that your company manufactures rubber hose. Your company doesn't manufacture a yard of rubber tubing, does it? *A.* Yes, we finish it.

Q. You buy the rubber hose, don't you?

A. We buy some rubber hose, but the bulk of the rubber we use is tubing, and known as tubing.

Q. That is what your other witnesses have said here?

A. Yes, buy the rubber tubing.

Q. And then you insert that rubber tubing into your jackets and subject it to the process which is called vulcanization, don't you? *A.* Yes. 10

The Court—All the use you make of the rubber hose that you buy, is to put it in jackets?

Witness—Yes, complete the hose.

Q. What is known in the market as rubber hose, you don't make? *A.* No, sir, we do not.

Q. You have also said that you manufacture couplings? *A.* Yes.

Q. Are not the couplings that you manufacture limited exclusively to couplings for fire hose? 20

A. What do you mean by fire hose?

Q. The fire hose that you put on the market?

A. You mean the regulation size, 2½ inch?

Q. I don't know anything about the regulation size.

A. We make couplings for all kinds of hose.

Q. I mean couplings for the hose that you put on the market? *A.* Yes.

Q. Isn't your dealings in couplings limited to such couplings that are used for the kind of hose that you put on the market? 30

A. We sell some to customers that they attach themselves.

Q. Exactly; but they are limited to the sort of hose you deal in? *A.* Yes, limited to them.

Q. And you don't deal in any other kind of couplings, do you? *A.* No.

Q. You have spoken of dealing also in and making nozzles. Do you manufacture the nozzles yourself?

A. Absolutely, yes.

Q. Do you manufacture or deal in any other nozzles at all, except nozzles for hose of the kind you deal in?

A. We sell all kinds of patented nozzles that we purchase from the people that make them.

Q. But they are usable on the hose you deal in?

A. Yes.

Q. And you don't make any nozzles of any other sort, do you? A. No, sir.

10

Re-direct by Mr. Perkins.

Q. Do you not make couplings for what is known in the market as rubber hose?

A. Yes, we make couplings that will fit any kind of hose.

Q. The rubber tubing that you purchase and use in your hose is subject to what process before it is completed?

Judge Lanning—We have gone over that.

20 A. It is received by us in a semi-vulcanized state.

The Court—It is vulcanized.

Witness—Yes, and finished.

Mr. Perkins—I should like to consult Judge Collins before closing our case.

The Court—I will reserve the right to the complainant to reopen for the purpose of putting in any evidence that after consultation with counsel you find has been overlooked by you.

Mr. Perkins—We will rest on that under-

30

Richard C. Chamberlain, sworn for defendant.

Direct examination, by Judge Lanning:

Q. Where do you reside? A. Trenton, New Jersey.

Q. You are a member of the bar, are you?

A. Attorney-at-law.

Q. Have been for some years? A. Yes.

Q. And have been for some years engaged with the Trenton Trust and Safe Deposit Company, haven't you?

A. Yes, and more intimate connection with the Real Estate Title Company.

Q. You have been associated as a helper to Mr. Hugh H. Hamill, the president?

A. I have, for the past fourteen years.

Q. Did you have anything to do with the organization of the Eureka Rubber Manufacturing Company, the defendant in this case?

A. I did; I prepared the certificate of incorporation, and also the proceedings for the first meeting. 10

Q. The certificate of incorporation, a copy of which has been offered in evidence, shows the incorporators, names of the incorporators; one of them is Elmer Ewing Green, who is he?

A. A member of the bar of New Jersey, and member of the Court of Errors and Appeals.

Q. William S. Hancock, who is he?

A. Resident of Trenton, former State Comptroller.

Q. Barker Gummere, Jr., who is he?

A. A resident of New Jersey, and was formerly 20
County Clerk of Mercer county.

Q. And now treasurer of the Trenton Trust and Safe Deposit Company? *A.* Yes.

Q. Edmund D. Cook, who is he?

A. He is a rubber manufacturer in Trenton, and also engaged in the oilcloth and linoleum business.

Q. George R. Cook, who is he?

A. Brother of Edmund D., and in the same business.

Q. Did you have anything to do in the work of the selection of the name of the defendant company? 30

A. No; I had nothing to do with the selection of the name.

Q. Did you have anything to do with ascertaining whether the name "Eureka Rubber Manufacturing Company" would be received by the Secretary of State?

A. I did. After they had decided upon the name I called at the office of the Secretary of State. I saw Mr. Brooks, the corporation clerk, and asked if there

was any reason why a company of that name should not be incorporated. He informed me that there was none that he knew of. That was simply following the usual custom to make that inquiry.

Q. Did you make a report to that effect to the incorporators? *A.* I did.

Q. Was that before the certificate was filed?

A. Yes; before the certificate was prepared.

Q. After having received that information what did
10 you do?

A. I was told to use that name, and immediately prepared the certificate of incorporation and proceeded to organize the company.

Cross-examination by Mr. Perkins:

Q. How long have you known Mr. George R. Cook?

A. George R. Cook, possibly ten years.

Q. How long has he been identified with the rubber
business, to your knowledge?

20 *A.* I cannot speak of my private knowledge as to his rubber business. I know he has been engaged in the rubber business for a considerable length of time.

Q. Upwards of ten years? *A.* I should think he had.

Q. How long have you known Mr. Edmund D. Cook?

A. About the same length of time, possibly I have known Edmund longer.

Q. How long has he been identified with the rubber
business?

30 *A.* I don't know about that; I know that he was prominently identified with the oilcloth and linoleum business, and I think he was always identified with his brother in the rubber business.

Q. Did you know it was Mr. Cook who selected the name of the defendant company?

A. I did not; I remember that the name was given to me by Mr. Hancock.

Q. Who is Mr. Hancock?

A. One of the incorporators.

Q. What was your object in visiting the Secretary of State's office to ascertain if that name could be used?

A. That was my custom always.

Q. Did it have special reference to the word "Eureka"?

A. No; just simply wrote the name and asked if a company of that name would be acceptable.

Q. Did you know that the Eureka Fire Hose Company was then a corporation of New Jersey? 10

A. I don't think my attention was called to that.

Q. Do you know? *A.* I don't think that I did.

Q. Do you know who selected the word "Eureka" in the defendant's corporate title? *A.* I do not.

Charles A. Comp, sworn for defendant.

Direct examination by Judge Lanning:

Q. Mr. Comp, you reside in Trenton?

A. I reside in Yardville, but employed in Trenton.

Q. Where? *A.* Secretary of State's office. 20

Q. You have been subpoenaed, or the Secretary of State has been subpoenaed, to produce certain papers here, and you have come for him? *A.* Yes.

Q. The subpoena requires the production of the certificates of incorporation filed in the Secretary of State's office of those companies having in their corporate names the word "Eureka." Have you such certificates here? *A.* I have.

Q. Produce them?

A. There they are (producing papers). 30

Judge Lanning—In order to economize space, and, I suppose, accommodate everybody, I suggest that I read the names, dates of filing and object of these various incorporations.

I offer in evidence the following certificates of incorporation, filed in the office of the Secretary of State.

Mr. Perkins—Objected to.

The Court—They are admitted, subject to complainant's objection.

Judge Lanning—I offer first certificate of Eureka Iron Mining Company, filed March 21, 1881. Object, mining, selling and buying ores, manufacturing; also buying and selling lands and leases and transacting a general business.

The Court—Just give the name and date and state the general objects.

10 Judge Lanning—The next, The Eureka Lawn Mower Manufacturing Company, filed January 24, 1882. Objects, manufacture of lawn mowers.

The Eureka Fertilizer Manufacturing Company, filed February 3, 1883. Object, manufacturing fertilizers, &c.

Eureka Electric Company, filed April 1, 1886. Object, manufacturing and dealing in electric machines, &c.

20 The Eureka Motor Company, filed October 21, 1887. Object, developing and manufacturing and selling motive power without the application of heat, &c.

Eureka Parchment Paper Company, filed December 27, 1887. Object, manufacturing water-proof parchment paper, &c.

The Eureka Gas Light and Fuel Company, filed January 31, 1889. Object, manufacturing appliances to be used in manufacturing illuminating gas, &c.

30 The Eureka Dairy Food Company, filed April 11, 1889. Object, manufacture machinery for the drying of brewers' and other grains, and so on.

The Eureka Cigar Machine Company, filed March 21, 1890. Object to manufacture and license others to manufacture machines for binding and wrapping cigars, &c.

The Eureka Vehicle Spring Company, filed June 12, 1890. Object, manufacturing vehicle springs and so on.

The Eureka Packing Company, filed May 21, 1891. Object, manufacture packing of all kinds, &c.

The Eureka Manufacturing Company, filed July 1, 1891. Object, the manufacture and sale of patented household articles, and so on.

The Eureka Typewriter Company, filed ¹⁰ August 6, 1891. Object, acquire patents and patent rights and to manufacture typewriters, and so on.

The Eureka Can-opening Company, filed December 14, 1891. Object, manufacture and sell all kinds of metal cans, boxes, &c.

The Eureka Electro-Manufacturing Company, filed April 21, 1892. Object, manufacturing, selling and dealing in all hardware and builders' materials, &c.

The Eureka Chemical Company, filed ²⁰ February 9, 1893. Object, manufacture and deal in paints and chemicals, &c.

Eureka Land Association, filed October 7, 1893. Object, buy, sell, lease and exchange real estate.

The Eureka Flint and Spar Company, filed February 23, 1895. Object, to purchase and sell flint, spar and Cornwall stone, &c.

The Eureka Street Sweeper Company, filed ³⁰ September 30, 1895. Object, acquiring patents and inventions for street-sweeping machines, &c.

The Eureka Car Replacer Company, filed May 1, 1896. Object, manufacturing and dealing in goods relating to railroad devices and specialties, and car replacers, and so on.

The Eureka Valve and Brake Company, filed May 25, 1896. Object, to manufacture and sell

the Eureka valve, Eureka brake and Eureka steering-gear and everything pertaining thereto, &c.

The Eureka Mining and Investment Company, filed August 10, 1897. Object, to prospect for, locate, approve, buy and pre-empt gold and silver and other mines in Alaska, &c.

10 The Eureka Fire-Proofing Company, filed February 7, 1898. Object, to manufacture and sell fire-proofing and fire-extinguishing solutions, &c.

The Eureka Cuspidor Company, filed February 21, 1898. Object, the manufacturing, buying, selling and dealing in cuspidors, spittoons, &c.

The Eureka Banana & Developing Company, filed December 19, 1898. Object, to purchase or otherwise acquire property in South America, &c.

20 The Eureka Construction Company, filed June 6, 1899. Object, to construct and build bridges, viaducts, water-works, &c.

The Eureka Blotter Bath Company, filed June 10, 1899. Object, purchasing, manufacturing, sale and exchanging and dealing in office devices and specialties.

Eureka Fire Hose Company, filed December 28, 1899, being the complainant in this case, which certificate is already offered in evidence and the object appears in evidence.

30 Eureka Lumber Company, filed July 18, 1900. Object, to purchase, take or lease or otherwise acquire timber lands in North Carolina, &c.

Eureka Vessel-Raising Company, filed August 29, 1900. Object, to locate and raise sunken vessels, &c.

The Eureka Sub-Marine Diving Company of America, filed January 28, 1901. Object, manufacture and sell diving apparatus, &c.

Eureka Realty Company, filed March 19, 1901. Object, to take, acquire, sell and dispose of real estate without limit, &c.

The Eureka Printing Company, filed April 26, 1901. Object, bleaching, dyeing, printing and finishing fabrics, calico, &c.

The Eureka Mining & Operating Company, filed February 8, 1902. Object, mining and quarrying of flint, spar, quartz, &c.

The Eureka Rubber Manufacturing Company, 10
filed July 15, 1902, being the certificate of incorporation of the defendant in this case.

I wish to offer in evidence also the charter of the Eureka Waist Cleaning Company, which is a private act, and is contained in the Pamphlet Laws of 1872, page 189.

Mr. Perkins—That is also objected to.

The Court—I will admit it subject to your objection.

20

Cross-examination by Mr. Perkins.

Q. Do you know how many of these companies are in good standing now in New Jersey?

The Court—You mean in existence?

A. I cannot say about that, but I think they are all in existence, with the exception of one or two.

Q. (By the Court)—You keep, I suppose, a record in the Secretary of State's office, that would show whether any of those have been dissolved? A. Yes.

Q. (By Mr. Perkins)—When a company is dissolved, 30
you don't remove the certificate from your files in the office? A. No.

The Court—I will let you put that list in. Get the corporation clerk to prepare his certificate as to which of these have been dissolved or are not in existence.

John A. Lambert sworn for defendant.

Direct examination by Judge Lanning.

Q. Mr. Lambert, you are a resident of Trenton?

A. Yes, sir.

Q. How long have you been?

A. Since November, 1902.

Q. Since coming to Trenton, what has been your business?

A. Engaged in the manufacture of mechanical rubber
10 goods.

Q. With what concern are you connected?

A. The Eureka Rubber Manufacturing Company.

Q. The defendant in this suit? *A.* Yes.

Q. What is your position with that company?

A. Secretary and general manager.

Q. Their factory is located at Trenton, is it?

A. Located just outside of Trenton.

Q. In the township of Hamilton?

A. Yes, adjoining Trenton, Mercer county.

20 *Q.* Where did you come from in November, 1902?

A. Chicago, Illinois.

Q. What had been your business there?

A. Western Manager of the Empire Rubber Manu-
facturing Company of Trenton, New Jersey.

Q. For how long? *A.* For about 12 years.

Q. How long have you been engaged then in the
rubber business? *A.* Since 1885.

Q. While you were in Chicago, what was your busi-
ness there? You said you represented the Empire, but
30 what did you do?

A. I had charge of the sales in the territory west of
Pennsylvania and New York State, and to the Rocky
Mountains, and from the Ohio river north to the Lakes.

Q. While representing the Empire Rubber Manufac-
turing Company in Chicago, did you become acquainted
with the trade in cotton rubber-lined hose? *A.* Yes, sir.

Q. And in rubber hose generally?

A. Yes, as sold in the territory with which I was
particularly familiar.

Q. Where is the Empire Rubber Manufacturing Company located? *A.* Trenton, New Jersey.

Q. Does it manufacture cotton rubber-lined hose?

A. Yes, sir.

Q. For how long a time has it manufactured that kind of hose?

A. Well, exactly since the time that I became connected with the company, that was in December, 1891; I think, 1891 or 1892. It was 1890 or 1891, or it may have been 1892. 10

Q. Has your business since 1885 been of such a character as to give you an acquaintance with the concerns in this country that manufacture cotton rubber-lined hose?

A. Yes, sir. Previous to my connection with the Empire Rubber Manufacturing Company, I represented the Boston Woven Hose & Rubber Company, then known as the Boston Woven Hose Company; previous to that, the New York Belting & Packing Company, which at that time controlled the Fabrice Hose Com- 20
pany.

Q. Will you give us the names of companies and concerns in this country now engaged in the manufacture of cotton rubber-lined goods, as far as you recall them?

A. Well, I can give you the names of those that I know positively manufacture this line of goods, and also the name of some of whom I am not quite certain whether they manufacture, but I know sell.

Q. Give us the list of those whom you personally know manufacture; what kind of goods first? 30

A. Well, there is the Boston Woven Hose and Rubber Company, the Boston Belting Company, the Callahan Company, also of Boston; the Fabric Fire Hose Company, of New York, the factories are in Sandy Hook, Connecticut; the Manhattan Rubber Manufacturing Company, of New York; the Gutta Percha and Rubber Manufacturing Company, of New York; the complainant in this case, the Eureka Fire Hose

Company; the Empire Rubber Manufacturing Company, of Trenton; Joseph Stokes Rubber Company, of Trenton; the United and Globe Rubber Companies, of Trenton; the Hamilton Rubber Company, of Trenton; the Eureka Rubber Manufacturing Company, the defendant company, of Trenton; the B. F. Goodrich Company, of Akron; the Diamond Rubber Company, of Akron; the Empire Manufacturing Company, of Lockport New York; and, if it is permissible, I know
 10 the New York Belting and Packing Company and Cleveland Rubber Company formerly made cotton hose, but their business has been consolidated and absorbed by the Fabric Fire Hose Company, as I understand; that is about all I recall; the Bowers Rubber Company, of San Francisco, and there may be one or two others.

Q. What do you know about the Revere?

A. The Revere Company sell and market cotton rubber-lined hose; I don't know if they make it.

Q. What about the New York Belting and Packing?

20 *A.* They are included with the Fabric Fire Hose Company.

Q. What about the New Jersey Car Spring?

A. The New Jersey Car Spring Rubber Company market cotton hose; I don't know if they make it.

Q. When did the defendant company commence the manufacture of cotton rubber-lined hose, or fire hose I will put it?

A. I cannot tell you exactly; I can tell you when our looms started, but my recollection is that we didn't make
 30 any fire hose for some little time after our looms started; I should say about two months, perhaps three. We made garden hose at first; that was in February, 1903.

The Court—You made garden hose in February, 1903?

Witness—Cotton rubber-lined, cotton hose.

Q. It appears that the certificate of incorporation of the defendant company was filed July 15, 1902. Did that company at that time have any factory?

A. No, sir.

Q. It built its factory after that date?

A. Between that date and February, 1903, yes.

Q. As soon as completed you began your manufacture, soon after the buildings were completed? *A.* Yes.

Q. What is the character of the business that your company has been carrying on since it commenced business?

A. We manufacture what is known to the trade as a general line of mechanical rubber goods, which comprises rubber belting, rubber hose for various purposes, such as steam, water, air, rubber packings of several varieties, both sheet packings and piston packings, rubber valves, rubber mats and matting, and various kind of molded goods, cotton rubber-lined garden, mill and fire hose, and enamel rubber carriage drills, ducks and muslins.

Q. Is the hose that you manufacture, which you say is steam, water and air hose, is that both cotton rubber-lined hose and rubber hose, or is it rubber hose exclusively?

The Court—The question is whether the rubber hose for steam, water and air, you referred to, is a pure rubber hose, or whether it is a cotton-lined hose?

Witness—It is a hose composed of a rubber tubing covered by layers or plies of what is known as friction canvas ducking; the outside of it is covered by a rubber covering.

Q. As I understand you, then, you distinguish between what you have designated as rubber hose for steam, water and air, from what you call your rubber-lined garden, mill and fire hose?

A. Cotton rubber-lined?

Q. Cotton rubber-lined mill and garden hose.

A. I should have used the word "oil" in connection with the other purposes for which hose is made, after air, "oil."

Q. Your company, then, as I understand it, is engaged quite largely in the manufacture of mechanical rubber goods of various kinds? *A.* Yes.

Q. Are you able to give us any statement as to what proportion of your entire product, your fire hose, is cotton rubber-lined fire hose?

A. I cannot give you, I cannot make any statement as to strictly, what might be strictly called the fire hose, the cotton rubber-lined fire hose; I can give you the
 10 figures of the proportion that our entire sales of cotton rubber-lined hose, including all kinds named, garden, mill and fire, bear to our total business.

Q. For what period of time have you ascertained figures upon which that statement is based?

A. From the commencement of our business, our manufacturing, to January 31st.

Q. January 31st of what year? *A.* 1904.

Q. Then beginning at what date?

A. Beginning at February 10 or 11, I think it was.

20 *Q.* So that the period covers almost a year?

A. About 11 months and a half.

Q. What proportion, then, of your entire business is represented by your cotton rubber-lined garden, mill and fire hose?

Mr. Perkins—Objected to. They didn't begin to manufacture until two months afterwards.

Witness—I may state that from the time our looms started they were busy—kept busy—so that if we weren't making the large size of hose
 30 we were making the small size of cotton hose.

Q. That is, from February 10th, about? *A.* Yes.

Q. Now, then, you may give us the proportion that I asked for.

A. The proportion is exactly about seven per cent.

Q. You have spoken of manufacturing enamel rubber carriage drills, ducks and muslins; just what is that product?

A. The goods that are made for the use of carriage manufacturers in covering the tops of vehicles, upholstering tops, also for storm aprons and sometimes for the covering of the seats and cushions.

Q. And what we commonly call curtains?

A. The storm curtains also.

Q. Are you engaged largely in the manufacture of that sort of product? *A.* Yes, sir.

Q. And have been ever since you commenced?

A. Yes, sir. 10

Q. Are you able to tell us the proportion of your entire product that is represented by enamel rubber carriage drills, ducks and muslins? *A.* Yes, sir.

Q. What is the time during the period named?

A. Little over 47 per cent.

Q. Do you manufacture rubber mats and matting to a considerable extent? *A.* Yes, sir; largely.

Q. Rubber valves to any considerable extent?

A. Yes, to a fairly large extent.

Q. Rubber packings? *A.* Large quantities. 20

Q. You have spoken of rubber packings of different kinds, sheet and piston. You might explain to us what the difference is a little more clearly, perhaps.

A. Sheet packings are put up in rolls varying in thickness from 1/64th of an inch up to as thick as 3/8ths or half-inch, in certain kinds; where the cloth is used there is an insertion. Pure gum sheet packings are frequently made as thick as one inch, without any cloth insertion, and the goods usually are finished 36 inches wide. These are known as sheet packings in the trade. 30
The term "piston packings" includes all packings that are cut to measure, to fit piston rods of engines, and vary in size from 1/4 of an inch up to 1 1/2 inches; sometimes 2 inches. Those are made both from pure gum and also a combination of rubber with duck, what we call frictioned together.

Q. You have spoken also of being engaged in the manufacture of belting. Is your company largely engaged in that?

A. To a considerable extent.

Q. Rubber belts, of course? *A.* Rubber belting.

Q. Do you manufacture any linen hose exclusively; I mean linen hose without any rubber lining?

A. We don't manufacture linen hose of any description, sir.

Q. You do manufacture what is known as rubber hose? *A.* Yes, sir.

Q. Both that and the cotton rubber-lined? *A.* Yes.

10 *Q.* Do you manufacture any cotton hose in which you have red and blue lines running longitudinally through the hose? *A.* No, sir.

Q. Have you ever woven hose with such lines in?

A. Not with my knowledge.

Q. You have been there are the time? *A.* Yes.

Q. Do you know whether you have any such hose?

A. Not to my knowledge.

Q. Do you use or stamp or weave in your cotton jackets the colors red, white and blue, at all?

20 *A.* No, sir.

Q. Have you done so at any time?

A. Not to my knowledge, sir, since I have been there.

Q. You are the general manager? *A.* Yes.

Q. If any such work had been done, you would be apt to know about it? *A.* I believe I would, sir.

Q. Excluding from consideration the rubber-lined garden, mill and fire hose, which you say constitutes seven per cent. of your entire product, does the residue represent general mechanical rubber goods?

30 *A.* Yes; it represents what is technically known to the trade as mechanical rubber goods and the carriage cloth.

Q. There is a distinction known in the trade between what is usually termed mechanical rubber goods and carriage cloth?

A. Yes; there are only comparatively few manufacturers of carriage cloth in the United States, and, in fact, only two that make carriage cloth in connection with mechanical rubber goods.

Q. Now, you have said that your carriage cloth business represents about 47 per cent. of your entire product, as I understand? *A.* Yes.

Q. And the rubber-lined garden, mill and fire hose about 7 per cent.? *A.* The cotton rubber-lined.

Q. The cotton rubber-lined garden, mill and fire hose about seven per cent.? *A.* Yes.

Q. Those two representing together 54 per cent.?

A. Yes.

Q. Does the residue, being 46 per cent., represent 10 your varied business in the manufacture of mechanical rubber goods? *A.* It does.

Q. Have you in your business, in the business of this company, given any particular names to your cotton rubber-lined hose?

A. Yes, sir; I have selected the brands myself and selected the distinguishing color lines which we use.

Q. Will you give us the names?

A. On the cotton rubber-lined hose?

Q. Yes.

A. Our best grade is known as Admiral. In that 20 brand we run three parallel lines longitudinally of a purple color.

Q. All the three being of one color?

A. All of the same color.

Q. No red or no blue?

A. No, sir; our next grade is Commodore, and has distinguishing color lines running in the same way as the other brand; we use one orange and one green line. Our next grade is Ensign, which is made without any 30 distinguishing color lines. In addition to those three, we make in a half-inch and three-quarter inch sizes only a brand we designate as Gunner. It is practically, it is the same hose as the Ensign, in those sizes only, made with a lapped seam tube instead of a seamless tube. Hose is a little lighter in weight than the Ensign.

Q. In your rubber hose, I am not speaking of the hose with cotton jackets, do you use specific brand names? *A.* Yes.

Q. What are they?

A. The qualities are indicated by an alphabetical arrangement of brands, the initial letter "A" designating the highest or best grade.

Q. And so on down as you pass through the alphabet?

A. As we pass through to the letter "G," the names of the brands are "Acme," "Buffalo," "Capital," "Durable," "Equality," "Favoritet" and "Guarantee."

Q. In a preliminary catalogue issued by your company, which has already been offered in evidence, the letter "E" is designated by "Economy." You gave one "Equality." Has there been a change made in the name, or do you use both?

A. No, sir, there has been a change made.

Q. Since the issuance of the preliminary catalogue?

A. Since the issuing of the catalogue, we found that the brand "Economy" was in use by another company engaged in the same line of manufacture.

Mr. Perkins—I object to the cause of the change.

The Court—No, I will allow that.

Witness—On being notified by the company in question, the Manhattan Rubber Manufacturing Company, we immediately altered the name.

Q. Has your company at any time used the word "Eureka" as a brand name on any of its products?

A. No, sir.

Q. Have these various brand names that you have given, been stamped upon your various products to the class of products to which they were applicable?

A. You refer to the brands of rubber hose?

Q. Yes. *A.* Yes, sir.

Q. And the brands as to the cotton-lined rubber hose, have they likewise been stamped upon the outside of the jackets?

A. Almost invariably; where the brand was not stamped there was nothing whatever stamped on them.

Q. There is some evidence in this case that you have

used the colors red, white and blue on rubber hose, and some exhibits have been brought here, showing it. I show you now sample 39, and ask you if that is one of them, in which the colors red, white and blue are used?

A. This is similar to the brands that we use.

Q. Does your company use those colors, red, white and blue, in any form on the cotton rubber-lined hose that you manufacture? *A.* No, sir.

Q. Does your company use the colors, red, white and blue, on the rubber hose, so that those colors run in 10 parallel lines longitudinally through the entire section of hose? *A.* No, sir.

Q. In what form do you use those colors?

A. In exactly the same form shown by this sample which I hold in my hand, marked 39.

Q. These colors, then, being stamped upon the outside of the rubber hose, say three inches in length?

A. Three or four inches in length.

Q. And an inch or a little more in breadth?

A. Yes, sir.

20

Q. Is that correct? *A.* Yes.

Q. I show you also a sample marked 30, it being the sample of rubber hose with the color lines encircling the hose. Is that one of your methods of using the stamp?

A. We have used this method—this style of branding, but experienced considerable difficulty in getting the ends of the three colors to come out even, the idea being originally to have the brands entirely encircle the hose, and as a matter of facilitating the branding of the hose, we afterwards used the color brands of rubber running 30 longitudinally instead of encircling.

Q. Now, your brands of these colors red, white and blue, as I understand you, are limited exclusively to your rubber hose, is that so?

A. Exclusively to rubber hose. We use it also in tying up our belting and packing.

Q. You mean the ribbons? *A.* Yes.

Q. That is another matter. I am not speaking of that just now. Those stamps that are used on the exterior surface of your rubber hose, whether encircling the hose or stamped longitudinally upon the hose, have not been longer than three or four inches in length, and an inch, or something like that, in breadth?

A. No, sir. I think this brand here is the largest we use, brand on sample 39. We place two brands, one at each end of the hose, about three feet from the
10 end, of the 50-foot section.

Q. I also show you a sample that is already offered in evidence, being C 32, which is a sample of rubber hose, and upon which is pasted a paper representation of colors, together with the name of your company, and marked "Acme" in lead pencil. Can you explain why that piece of paper was put upon that sample?

A. Yes, sir.

Q. Do so.

A. Receiving a request for a sample of rubber fire
20 hose, which was very urgent, and not having any samples made up—when I say samples, I mean short lengths, which are manufactured especially as samples, to show the goods—I was compelled to cut a sample off of a section of hose, which in order to get the brand, our regular brand, I would have to make unsalable by cutting off three or four feet, and so this short piece of five or six inches was cut off the end of a section of hose; not having any rubber brand on it, this sticker
30 with the boxes in which we put up rubber tubing, white rubber tubing of small sizes.

Q. Now, the colors stamped upon that paper are red and blue, are they not? *A.* Yes, sir.

Q. The intervening line of white being the natural color of the paper? *A.* Yes.

Q. What sort of stamp was used in making that imprint of the red and blue lines? What I mean is, was it the same sort of stamp used in stamping the rubber goods of which sample 39 is a specimen? *A.* No, sir.

Q. What did you use in making the stamp of that red line?

A. This particular paster on here was cut from a strip used to face a square box in which we pack white rubber tubing.

Q. Now, the stamp or the representation of the color lines in this sample marked *C 32* are the same length about as in the sample *39*, are they not?

A. They seem to be exactly the same.

Q. And there is nothing in sample *C 32* that indicates 10 that these color lines were intended to run longitudinally through the entire length of a section of hose like that of *C 32*? *A.* I shouldn't think so.

Recess.

Q. Mr. Lambert, you have named the Bowers Rubber Company, of San Francisco, as one that manufactures cotton rubber-lined hose. Do you know the names of any brands that that company makes or not?

A. I don't recall any of their brands just now, sir. 20

Q. You have named a number of other companies that manufacture cotton rubber-lined hose. Can you tell whether cotton rubber-lined hose is known in the market generally by the names of the makers, or by the name of the brand?

A. Well, to my knowledge, the well-known brands are; that is, the brands that have been any length of time on the market are probably better known by their specified brands than by the names of the manufacturers. The brands not so well known I wouldn't make that claim for. 30

Q. Take, for example, the brand known as the Maltese Cross. By whom is that made?

A. Maltese Cross hose is made by the Gutta Percha and Rubber Manufacturing Company.

Q. And how is that brand known in the market?

A. Well, it is very well and generally known as Maltese Cross hose.

Q. Is that a cotton rubber-lined hose or rubber hose?

A. Rubber hose.

Q. Is it known in the market as the Gutta Percha hose?

A. Well, that is a difficult question to answer yes or no to. It is a question I could answer to the best of my knowledge, tentatively; that is, tentatively as to the way in which the goods are known. I should say that to the great majority of buyers the goods were known as Maltese Cross; that is, to the fire departments, where the
10 goods are used.

Q. How, in the market, is the brand known as the Baker Fabric recognized? By what name does it go in the market? *A.* It is known as Baker Fabric.

Q. Is that made by the Gutta Percha Company also?

A. It is sold by them. I am not prepared to testify that it is made by them. It is sold by them, and I understand it is made by them.

Q. Mr. Wies has said that the products of various manufacturers are known by the names of the manufac-
20 turers, without giving the names of the brands at all. What is your experience as to the method of designating brands of hose in the market; is it by the name of the manufacturer or by the name of the brand?

A. Where brands have been on the market for a sufficient length of time to be well known, or fairly well known, the goods are usually referred to and known by the particular brand used.

Q. How, in the market, is the hose manufactured by the complainant company designated the Paragon
30 known?

A. I should say it was known as Paragon hose.

Q. How that, that has the brand name "Red Cross"?

A. Red Cross, in the same way. I don't think perhaps the brand is as well known as that of Paragon.

Q. How as to that brand which has been testified to here as being called the Eureka, made by the complainant company? Is that known in the market as Eureka fire hose?

A. It is known in the market as the Eureka brand.

Q. Do you know a brand of hose by the name of White Anchor? *A.* Yes.

Q. Is that cotton rubber-lined, or rubber hose?

A. Rubber hose.

Q. By whom is it manufactured?

A. B. F. Goodrich Company, of Akron, Ohio.

Q. Is that known as Goodrich's hose or as White Anchor?

A. It is very well known as White Anchor hose. 10

Q. Do you know a brand of hose by the name of Peerless, made by the complainant company?

A. I have heard of the brand a number of times in this case.

Q. You only know it as you heard it in this case?

A. Well, I have got a knowledge of the existence of the brand previous to this hearing here.

Q. Do you know of a company known by the name of Peerless Rubber Manufacturing Company? *A.* Yes, sir.

Q. Where is that company located? 20

A. The factories are at New Durham, New Jersey, I think.

Q. Do you know the New York Belting and Packing Company? *A.* Yes, sir.

Q. Where is that located?

A. Their mills are located, some of them at Passaic and others in Connecticut.

Q. Does that company manufacture a brand known as the Test hose?

A. That has been a brand of rubber hose made by them for some twenty years or more that I know of. 30

Q. Is it a well-known brand?

A. A very well known.

Q. How is that brand generally known in the market, as New York Belting and Packing hose or as the Test hose? *A.* I should say as the Test hose.

Q. Where is the Fabric Company located?

A. Sandy Hook, Connecticut.

Q. Do you know any brands sold by that company?

A. Yes.

Q. What?

A. Arrow is one of their brands, Unique is another, and Keystone.

Q. Are those brands well known in the market?

A. Well, two of them are very well known, the other fairly well known.

Q. Which two are the best known?

10 *A.* I should say the Keystone and the Unique.

Q. How are they generally known in the market, by those brand names or by the name of Fabric Company's hose?

A. Well, I have always heard the Keystone brand referred to as "Keystone Hose" or "Keystone Treated Hose," and I have heard it referred to in that way by parties that I have reason to believe didn't know who made the hose. The same remarks hold true of some of the other brands you have inquired about.

20 *Q.* In the market are the goods of the complainant company, the Eureka Fire Hose Company, known generally by their brand names or by the name of the company?

A. I should say that they were known generally by their brands, perhaps more so than any other manufacturer in the business.

Q. Considerable has been said in this case about the manufacture of solid woven hose. Do you know whether the complainant company has engaged in the
30 manufacture of what is called solid woven hose?

A. I know that they put such a hose upon the market, and I understood both Mr. Stowe and Mr. Wies to testify that they made it.

Q. Mr. Wies testified on the stand how that hose is made. That is, it is by interlocking strands or threads between the different plies. Do you know of any other company that makes that kind of hose, that kind of jacket? *A.* Not in the United States.

Q. Has your company ever made that kind of hose?

A. No, sir.

Q. And doesn't make it now? *A.* No, sir.

Q. Considerable has also been said about the manufacture of cotton jackets of separable plies. Does your company make such cotton jackets? *A.* Yes, sir.

Q. It is in evidence also that the complainant company does. Do you know whether any other companies in the United States do so?

A. A large number of them do.

10

Q. You named a large list this morning. Do you know whether a considerable number of them make separable plies?

A. To the best of my knowledge and belief, all except one make separable plies of woven hose; that is the Callahan Company.

Q. How long have separable plies been made by manufacturers in the United States?

A. I can only tell as far as my own knowledge goes; that is, my actual knowledge; I sold goods of that description in 1885.

20

Q. Of whose manufacture at that time, do you recall?

A. The Boston Woven Hose Company, now known as the Boston Woven Hose and Rubber Company.

Q. Do you know whether there was a patent originally existing upon the process of manufacture of cotton hose in separable plies?

A. I cannot speak as to the separable plies. I know there was a patent, but I have reason to believe there was a patent on the looms for making that class of hose.

30

Q. Do you know whether the patent has expired?

A. The patent on the method of weaving has expired, yes, sir.

Q. So that all companies are free to use the system now?

A. All of the companies I named are making hose of that general description, of that particular description, I might say, except the Eureka Fire Hose Company.

Q. Then, I understand you that as to the making of cotton hose of separable plies, in which the complainant is engaged, not only your company, but a large number of others, are doing the same thing?

A. That is correct.

Q. Has your company ever used the word "Eureka" as a brand name? A. No, sir.

Q. Has it ever used the word "Eureka" in any wise by way of advertisement or by way of designation of
10 goods, except in conjunction with the other words of your corporate name? A. No, sir.

Q. Has your company ever used the word "Eureka" in connection with fire hose in any other manner than you have used it also in connection with the mechanical rubber goods and other goods that you make?

A. We never used the word "Eureka" in connection with the fire hose or cotton rubber-lined hose of any description made by us, except as a part of our corporate title, The Eureka Rubber Manufacturing Company.

20 Q. There is in evidence here a letterhead used by your company, and which gives your corporate name, and also the location of your place of business, Trenton, New Jersey. Is that letterhead of a similar character to all the letterheads that you use? A. That we use?

Q. Yes.

A. It is precisely the letterhead that we are using now, and have been using for quite a length of time.

Q. Your letterheads designate the place of business as well as the name? A. Yes, sir.

30 Q. Something has been said here about misdirected letters. Does your company receive letters that are wrongly directed? A. Occasionally, sir.

Q. You have already testified that the Empire Rubber Manufacturing Company is located in Trenton?

A. Yes.

Q. Have you not? A. Yes, sir.

Q. Does your company and that company have an interchange of letters that are misdirected, sometimes intended for one and sometimes for the other?

A. We frequently have.

Q. How frequently does that occur; I don't suppose you can tell exactly?

A. We never kept a record of it. I have known of as many as two or three cases a week happening; in fact, I have known of that number of cases in one day. I have never attempted to keep any record, though I have known salesmen of our own to enclose orders and correspondence addressed to the Empire Rubber Manufacturing Company. 10

Q. In your experience as a business man, have you or have you not observed that letters are frequently misdirected?

A. Why, it has come to my notice, and I believe that the statistics of the post-office branch of the Government will show—

Mr. Perkins—Objected to.

Q. In your experience as a business man, have you learned that letters are frequently misdirected?

A. Yes, sir. 20

Cross-examination by Mr. Perkins.

Q. Mr. Lambert, if you were speaking generally of the goods manufactured by the Revere Rubber Company, of Boston, what would you call them?

A. I would call them Revere Rubber Company's goods.

Q. Would you call them the Revere goods?

A. I don't believe I would, unless they were spoken of in a very general way. 30

Q. If you were speaking of the goods manufactured by the Bowers Rubber Company of San Francisco, would you speak of them as Bowers' goods?

A. I will say speaking—answering that question, that I am rather inclined to be precise myself, and I shouldn't speak of them that way.

Q. Isn't it usual for business men to contract the names of the corporations, taking the essential word

of the corporation, as designating the goods manufactured by that company? *A.* It may be with some.

Q. Don't you think that is the usual method among business men? *A.* No, sir.

Q. How long have you been engaged in or been connected with the rubber business, Mr. Lambert?

A. Almost twenty years.

Q. How old are you, please? *A.* I am almost 42.

Q. What companies have you been connected with; 10 give us the names of them as you have been connected with them, chronologically.

A. Backwards or forwards?

Q. Starting the earliest and coming down to date.

A. I was first connected with the New York Belting & Packing Company, at their Chicago store; after that with the Boston Woven Hose Rubber Company. The word "Rubber" wasn't part of their title at that time.

Q. At Chicago?

A. At Chicago. I worked from the factory from 20 Boston, but I made my headquarters in Chicago. After that with the Empire Rubber Manufacturing Company, Trenton, New Jersey, and lastly with the company with which I am at present connected.

Q. Weren't you with some other company after the Empire Company of Trenton? *A.* No.

Q. Were you not with the Empire Rubber Manufacturing Company of Chicago? *A.* No, sir.

Q. Were you not connected with a company of a name similar to that in Chicago?

30 *A.* I was interested in a company of that name.

Q. What do you mean by you were "interested in the company"?

A. I was interested in it as being a stockholder.

Q. What was the name of that company?

A. The Empire Rubber Manufacturing Company of Illinois.

Q. Were you not an officer of that company?

A. I believe I was.

Q. Didn't you cause that company to be incorporated?

A. Yes.

Q. The name of that company was identical with the company that you had been previously connected with, was it not? A. No, it was not.

Q. At the time or just previous to the time of the incorporation of that company by you, with what company were you connected?

A. I want to correct your question, the company wasn't incorporated by me. 10

Q. Previous to the organization of the company, with what company were you connected?

A. Organization of which company?

Q. Of the Empire Rubber Manufacturing Company of Illinois?

A. I was connected with the Empire Rubber Manufacturing Company of Trenton, New Jersey.

Q. When did you cease your connection with that company? A. The first of August, 1902.

Q. When did you become connected with the Empire 20
Rubber Manufacturing Company of Illinois?

A. I subscribed for some of the stock of the company after it was incorporated. I cannot give you the exact date from memory.

Q. Was it not immediately after your disconnection with the Trenton company?

A. I believe the company was incorporated before my disconnection with the Trenton company.

Q. How much of the stock of that company did you hold? 30

Objected to. Objection sustained.

Q. When did you cease to be connected with the Empire Rubber Manufacturing Company of Illinois?

A. When the company went out of existence.

Q. When did it go out of existence?

A. About, I should say three or four months ago.

Q. Did it go out of existence by reason of the decree of a court?

Judge Lanning—Objected to as irrelevant.

The Court—Yes.

Q. Why did it go out of business?

Judge Lanning—Objected to as irrelevant.

The Court—I will permit that question.

A. Because it allowed its charter to expire.

Q. Was that the same company that was engaged in litigation with the Empire Rubber Manufacturing Company, of Trenton?

10 Objected to. Objection sustained.

Q. Mr. Lambert, in giving the various percentages of business of the defendant company, from what data is your information taken?

A. From actual compilation of sales.

Q. By whom was that compilation made?

A. It is made from week to week by our cashier and checked over by me.

Q. And by whom were the figures reduced to percentages? A. By me.

20 Q. What amount of business in dollars has the defendant company transacted from February 10, 1902, to January 31, 1904?

The Court—You mean sales, business transactions?

Judge Lanning—What is the object of that?

The Court—It is cross-examination on the point of percentages.

30 A. Approximately \$405,000 to \$410,000. I say approximately, because there are always a few minor items in the way of goods charged back or returned that ought to be deducted from the—in order to secure the net amount of sales.

Q. What has been the net amount of sales in the mechanical rubber line of your company's business?

The Court—That would exclude the hose.

Mr. Perkins—I mean him to give the figures for each of the three items.

Q. Give us the figures for the 7 per cent., the 47 per cent. and the 46 per cent.

Witness—Can I refer to a memorandum?

The Court—Yes.

Witness—The cotton hose business was \$28,373.

The Court—That includes all grades, garden, fire and mill hose?

Witness—All cotton rubber-lined hose. The mechanical rubber goods, exclusive, \$187,000, approximate, and the carriage cloth part of the line, \$192,000. .

10

Q. The \$28,373 of business, does that include rubber hose? A. No, sir.

Q. How many looms has your company engaged in making cotton rubber-lined hose?

A. Four DeLaski looms. DeLaski is descriptive of the style of looms.

Q. How long after the incorporation of the company did you become connected with it?

A. I was connected with it from the time of its incorporation.

20

Q. You were one of the promoters of the company, were you not? A. Yes, sir.

Q. Can you tell me who compiled the preliminary catalogue which has been offered in evidence? A. I did.

Q. You do put on the market cotton rubber-lined hose without any mark to indicate whose manufacture or what brand it is, do you not?

A. Except in the garden hose, we do not, the three-quarter.

Q. But you do in the garden hose?

30

A. Yes; but we use distinctive color lines, which are advertised and referred to in that particular catalogue.

Q. How long have you known the Eureka Fire Hose Company?

A. I have known of them since I have been in the rubber business.

Q. They are one of the oldest companies making fire hose, are they not?

A. Making cotton rubber-lined fire hose, I think they are, yes.

Q. Are you acquainted with all of the brands put upon the market by that company?

A. I am, sir. I know a great many of them, but not all.

Q. Had you ever seen their Eureka Underwriter best linen hose previous to your compilation of that preliminary catalogue; I refer to sample No. 6?

10 A. I have been acquainted with the brand. I don't know that I ever saw any of the hose itself. I knew it made a hose of that description, underwriters' hose.

Q. I show you sample No. 11 and ask you if you had ever seen any of that kind of hose manufactured by the complainant company previous to your connection with the defendant company?

A. I had never seen it with the complainant's name on it. I have seen hose of the same kind without those color lines?

20 Q. Have you ever seen it with those color lines?

A. I cannot recall that I have.

Q. Referring to *Exhibit Sample 32*, did you personally paste that red and blue label on there?

A. Yes, sir; myself.

Q. Where did you get the label from?

30 A. As I explained earlier in the day, we make what is known as white rubber tubing. It is made in small sizes, used for syphon purposes and in connection with the druggists' sundries, and these goods are put up in pasteboard boxes, and the manufacturers usually print their names and whatever designating brand they may have on the boxes in some form, either on the cover or along the edge of the boxes. These are what we have used to paste on the edge of the boxes, with the brand, with the grade, the white space left here for the grade, "Durable," or "Buffalo," or whatever it might be.

Q. Do you not use, in connection with your business generally, red, white and blue stripes, or ribbons?

A. I don't quite understand the question.

Q. Do you not use, in identifying your goods, red, white and blue colors?

A. In the identification of our rubber goods, to a considerable extent.

Q. Do you not also use paper pasters with the red and the blue lines separated by the natural white of the paper, making a red, white and blue mark or insignia?

A. The only place I can recall we use that is on the tubing boxes, as I explained.

10

Judge Lanning—And when you say anything of this kind, you are referring to the label on sample C 32?

Witness—Yes.

Q. Do you not use the tri-color on your letterheads?

A. Yes, sir.

Q. And on your advertising matter generally?

A. No, not on our advertising matter generally.

Q. On your business cards?

A. Our business cards are a reproduction of our 20 letterhead.

Q. Have you not another business card which shows the red, white and blue lines?

A. No; the only card we have used for a considerable length of time is a reproduction of that letterhead.

Q. Does the business card have the colors?

A. Yes, an exact reproduction.

Q. By what general terms, if any, are the goods of the defendant company known to the trade?

A. I don't know whether I can answer the question. 30
We have only been manufacturing goods for a year, Mr. Perkins; I don't know really by what name the trade would term our goods; we have sought to bring our goods to the attention of the public through our brands, particular brands, more than any other way.

Q. By what general term, if any, are the goods of the defendant company known to the trade; can you answer that question; have you sought to bring your

goods to the attention of the public under the name of "Eureka goods"?

A. Except in connection with our corporate title, no.

Q. I show you preliminary catalogue which has been marked in evidence, and call your attention to page 3, where it says, "How to tell Eureka goods"?

A. Yes, sir.

Q. Were you the writer of that portion of that catalogue?

10 *A.* My recollection is I compiled the entire catalogue, sir.

Q. In view of the reference that I have made to the third page of that catalogue, do you wish to qualify your answer?

A. No, sir; I presume this catalogue is to be taken as a whole in evidence, and not as one particular page, and it is very clearly stated previous to page 3 what this company is, and that it is a recently organized company.

20 *Q.* And this tri-color that is on the catalogue is a part of the general advertising device of your company?

A. It is used on our letterheads and on our business cards; I think that has been brought out in evidence.

Re-direct by Judge Lanning:

Q. You have stated that you used to some extent red, white and blue tri-colors to identify your rubber goods. In what way do you use them to identify your rubber goods?

30 *A.* As shown by the samples of rubber hose in evidence in the case.

Q. What samples? *A.* Sample 39.

Q. Is that an illustration of the way in which you use the tri-color? *A.* Yes.

Q. I understand you to have said already that you do not use it in any form to distinguish your cotton rubber-lined hose? *A.* That is correct.

Q. And never have? *A.* No, sir.

Q. Your attention was called to the use of the tri-color in the letterhead; I observe that the letterhead shows the tri-color on a picture of a section of rubber hose, if I am not mistaken, is that true? A. Yes, sir.

Q. Not of cotton rubber hose at all?

A. Of what is known to the trade as rubber hose.

Q. I observe, further, that according to that representation the tri-color encircles the rubber hose, does it not? A. Encircles it.

Q. Encircles or partly encircles it, does it not? 10

A. Yes.

Q. It does not extend longitudinally on the hose?

A. No, sir.

Q. As I understand you now, you say that generally you use it in a longitudinal form? A. Yes, on the hose.

Q. Do you have any letterheads at all or cards or advertisements of any sort in which the tri-color is represented on cotton rubber-lined hose? A. No, sir.

Q. Have you ever had? A. No, sir.

20

Re-cross by Mr. Perkins:

Q. Who designed the letterhead that is used by the defendant? A. I did, sir.

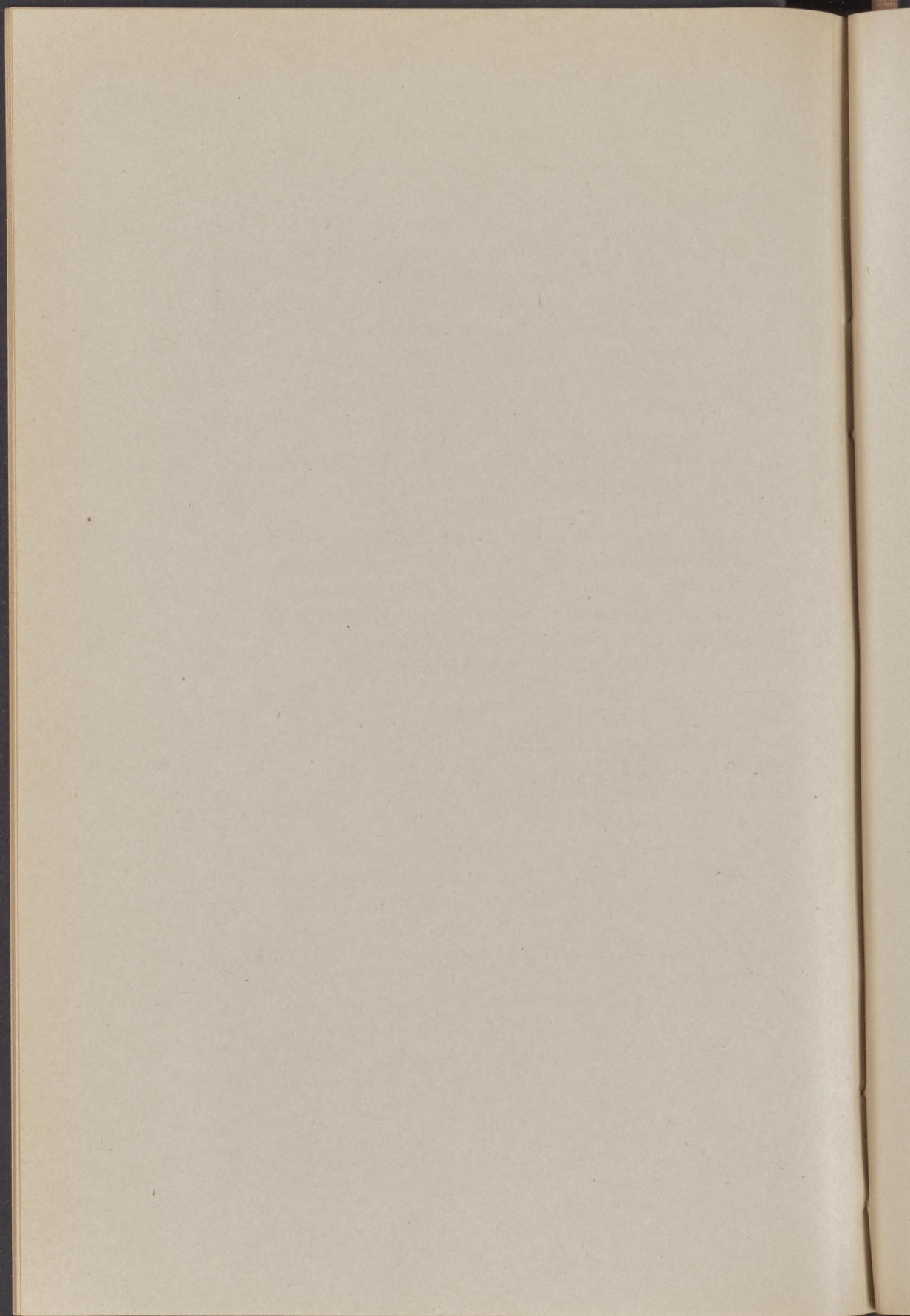
Defendant rests.

The Court—As to the list to be prepared by the Secretary of State's office, I will give you leave to put in a statement of those companies whose charters have expired.

Adjourned to Monday, April 4, 1904, at 10:15 A. M., 30
for argument.

April 4, 1904.

The list of charters which have expired, referred to above, is put in by complainant and marked *Exhibit*



OPINION.

(Filed April 12, 1905.)

Heard on bill, amended bill, answers, replication and proofs.

Mr. Perkins, Mr. Collins and Mr. R. V. Lindabury for complainant.

Mr. Wicoff and Mr. Lanning for defendant. 10

Complainant is a corporation of this State, incorporated December 25th, 1899, under the name of "Eureka Fire Hose Company," and the defendant is also a corporation of this State, organized July 15th, 1902, under the name of "The Eureka Rubber Manufacturing Company." The principal manufactures of the complainant are fire and other hose, two-thirds of its business being in a rubber-lined cotton fire hose, and a considerable part of defendant's sales, seven per cent., or more, are of hose of the same general character. 20
 Complainant is the successor of a company incorporated in the State of New York in 1875, "to manufacture fire hose and other knit and woven fabrics," which carried on the business of manufacturing the rubber-lined hose from that time until the complainant was incorporated in this State (where its factory was located), mainly for the purpose of taking over the property and business of the New York corporation. Complainant claims that at the time of defendant's incorporation, the hose and goods manufactured by it had become known in the trade and to the public as the "Eureka" hose or goods, 30
 and that it was entitled to the exclusive use of this name as applied to these articles. The use by the defendant of the name "Eureka," with reference to the same class of goods, which it is putting on the market, is alleged to be a violation of complainant's exclusive rights to the name or word. The complainant also claims that the goods manufactured by its predecessor and itself, and

always put upon the market under the name "Eureka," were of a high grade or standard, and the name came to indicate this high grade, and that the use by the defendant of the name "Eureka" in connection with the advertisement and marketing of its goods is an attempt to market their goods upon the reputation of complainant's goods, and is done in unfair competition with complainant; that the use of the word "Eureka" by defendant in its corporate title and in advertising and
10 marketing its goods, is likely to deceive, and has, in fact, deceived the public, and has led to purchases of defendant's goods, instead of complainant's goods. The complainant also alleges that because rubber is one of the components principally used by it in its manufacture of hose, the word "Rubber" has, from the time of the formation of the New York company, been often used by its customers and correspondents as part of its title, in addressing them for orders or upon business; that the defendant company has established an office in New
20 York, where complainant also has an office, and that such confusion has resulted from the use by both companies of the name "Eureka," in reference to the same class of goods; and it is also alleged that the use of the name "Eureka" in its corporate title was in contravention of the eighth section of the corporation act, which provides that "no name shall be assumed already in use by another corporation of this State; or so nearly similar thereto as to lead to uncertainty or confusion." The bill prays an injunction against defendant's using
30 word "Eureka" in advertising or marketing its wares, especially fire hose, and the use of the name "Eureka" in its title as a corporation or otherwise. The defendant denies that the complainant's goods had become known in the trade by the name of "Eureka" goods, or that complainant had acquired any exclusive use of this name. It admits that it manufactures and markets rubber-lined cotton fire hose and other hose, in competition with complainant, but alleges that in advertising

and marketing these goods, the hose and other articles are not advertised, marketed or stamped with the single word "Eureka" as a trade mark or name, but that this word is only used in connection with the corporate name, and its place of manufacture, Trenton, N. J., together with the trade mark or trade name of the special article, such as "Acme," "Buffalo," "Capital," etc. As to the claim of unfair competition, defendant denies that the use of the word "Eureka" in its corporate title or in advertising or marketing its goods is likely to deceive or has deceived the purchasing public, or leads or threatens to lead to a diversion of any of complainant's business to defendant, or that defendant has ever sold its goods as complainant's goods or on their reputation. 10

As to the selection of its name, the defendant alleges that on application made on its behalf to the office of the Secretary of State, it was informed that the name assumed by it had not been assumed by any other corporation, and that no other name so nearly similar thereto as to lead to uncertainty or confusion had been so assumed, and that thereupon the defendant chose this name. 20

Complainant alleges that before filing the bill, it applied to the defendant to cease the use of the word "Eureka" in competition with it, and defendant admits a request to discontinue the use of the word "Eureka" in the prosecution of defendant's business, and that it declined to accede thereto, and the reason given is that the use of the word "Eureka" in defendant's corporate title and in its advertisements and upon its goods, does not lead to any uncertainty or confusion under the eighth section of the corporation law, and does not constitute unfair trade or competition. 30

By an amendment to the bill, made at the hearing, the complainant also claims the exclusive right to a distinctive device, consisting of red, white and blue color parallel lines woven in the fabric, for the purpose of distinguishing certain kinds of hose manufactured by

it, that this device has become generally known to the public as indicating "Eureka" goods of a particular kind, and has become identified with "Eureka" hose. The exclusive right to use this device in connection with the trade name "Eureka" is claimed as a valuable asset. Defendants are charged with simulating this device, by the use of red, white and blue parallel lines in its catalogues and in branding and putting up its goods, intending to mislead the public, and that for the purpose of
10 creating confusion and causing the public to believe that defendant company is identified with complainant, the defendant uses these color lines, and the restraint of this use is sought. The defendant's amended answer, also filed at the hearing, denies any simulation of this color device of complainant, or any use of it violating any rights thereto which complainant may have.

EMERY, V. C.—(After statement of issues). Four questions for decision are raised by the pleadings and proofs.

20 *First.* Whether complainant has such an exclusive right to the use of the name or word "Eureka" as applied to the goods of its manufacture; that the use of this name or word by defendant in the marketing of similar goods in competition is an infringement of complainant's right to the use of the word or name on the goods.

Second. Whether the use of the name or word "Eureka" by the defendant in its corporate title, or otherwise in connection with the marketing of the goods in
30 competition with complainant, was unfair or fraudulent competition.

Third. Whether the use of the name was a violation of the statute.

Fourth. Whether defendant's use of the color lines, either on its goods or in the advertising and marketing of them, should be enjoined, either as a violation of complainant's exclusive right, or as unfair competition.

The facts relating to the first question are not sub-

stantially disputed. It is clearly proved by complainant that the goods manufactured by the New York Company, and by complainant as its successor, were, at the time of the defendant's incorporation, generally known in the trade under the name of "Eureka" goods, and that their goods, especially the "Eureka" fire hose, had a more extensive sale and had acquired a higher reputation than those of any other manufacturer. The fire hose was a rubber-lined cotton fire hose in which an inside rubber tubing is covered with an outside cotton fabric (either woven or knit), the two being combined by a process of vulcanization. The rubber tubing used was manufactured for complainant to its special order and delivered in a special condition adapted to its process of vulcanization. The process of combining the tube and cover does not appear to have been patented, but complainant's predecessor claimed to have been the original makers of this combined cotton rubber-lined hose, and in its manufacture it appears to have attained the highest reputation in the home market, and also in many foreign markets. At the time of the transfer by the New York Company its entire business in hydraulic hose amounted to over \$500,000 a year, about two-thirds of which was the cotton rubber-lined hose—a trade exceeding that of any competitor in these goods. The price of the "Eureka" hose was generally higher than that of other hose, and some of its varieties had been adopted or referred to as the Standard hose. Several kinds of hose were made, differing in grade, quality and purpose of use, and to each of these varieties or brands a second or subsidiary trade name or trade mark was given, except to the kind marked with the word "Eureka" alone, which was the best of each class of hose manufactured. In every other case the second or subsidiary name (usually called "brand" in the trade) was used in connection also with the name "Eureka," sometimes in the entire name of the brand, as "Eureka Peerless," "Eureka Wove Knit Hose,"

"Eureka Garden Hose," &c. In some form the name or word "Eureka" appeared on all their goods, and (except in a single instance) the name of the company, The Eureka Fire Hose Company, was also stamped on all their goods. This exception was the fire hose sold to the city of New York, where the brand name "Eureka" was alone used. All of complainant's hose bore thus in some form the name or word "Eureka." This word as an *arbitrary or fancy* word, was available to
 10 complainant for its exclusive use as a trade mark in the designation of its goods, and, as the proofs shows, this single name or word "Eureka" had come to designate and distinguish complainant's hose and other goods at the time of defendant's incorporation. The circumstance that this name "Eureka" was also used in connection with other words (in its title or otherwise) could not deprive complainant of the exclusive use of this word as applied to their goods, or make the exclusive use dependent on the association with other words.
 20 Many of the words other than "Eureka" which were used on their different brands were merely descriptive and not the subject of an exclusive use, such as "Eureka Water Tower Hose," "Eureka Fire Boat Hose," "Eureka Tank Hose," "Eureka Garden Hose," "Eureka Wove Knit Fire Hose," &c. The defendant admits the use of the name or word "Eureka" on all of its goods which are put on the market in competition with complainant, but relies as a defence, or justification, upon the fact that the word "Eureka" is used on its goods only in connection
 30 with its corporate title—"The Eureka Rubber Manufacturing Company of Trenton, N. J.," which is stamped or marked on the goods, and in connection also with a special brand name, such as "Acme," "Buffalo," &c.

But if complainant has acquired the exclusive use to the name or word "Eureka" as a trade mark on the goods of its manufacture, this right may be infringed by the use of the name or word, even although in connection with other words or accessories. *Paul Trade*

Marks, sec. 204. In *Newman vs. Alvord*, 51 N. Y. 189, plaintiffs manufactured cement, or water lime, from stone taken from quarries near Akron, Erie county, and their cement came to be known in the market as "Akron" cement. Their labels were "Newman's Akron Cement Co., manufactured at Akron, N. Y. The hydraulic cement known as the Akron Water Lime." Defendants manufactured cement from a stone quarried near Syracuse. Their labels were "Alvords Onondaga Akron Cement, or Water Lime, manufactured at Syracuse, N. Y." It was held (p. 193) that the plaintiff had, as against the defendants (who did not get their cement from Akron), the right to the exclusive use of the word "Akron" as their trade mark on their goods. It appeared in this case (p. 192) that the Court found that the word "Akron" was used in the label by defendants for the purpose of increasing their sales and availing themselves of the reputation acquired by plaintiff's cement, under the name of "Akron" cement, and that it was calculated to induce ordinary buyers to believe they were purchasing either plaintiff's cement, or cement of the same kind and value, but the judgment in the case was based on the plaintiff's exclusive right to use the word "Akron" as their trade mark and defendant's use of this word on their goods was enjoined (p. 190). In *Hier vs. Abrahams*, 82 N. Y. 519 (1880) plaintiffs sold a brand of cigars with labels on the boxes "Hier & Aldrichs" and beneath this name the word "Pride" in large letters and "Havana" underneath. Defendant's label was "The Pride of Syracuse" and beneath this "Abrahams & Co." An injunction against the use of the word "Pride" as a trade mark on cigars was granted and the Court said (p. 525): "Its use in connection with different words or names from those in connection with which the plaintiff used it does not sanction its being pirated any more than did the like use of the word Akron, &c." In *Ford vs. Foster, L. R.*, 7 Ch. App. 611 (1872) the plaintiff who designated

shirts manufactured by him as "R. Ford's Eureka Shirt," and had given them a trade reputation, was held to be entitled to a trade mark of the word "Eureka," as applied to shirts, and to enjoin defendant, who sold similar articles labeled with the word "Eureka" alone, and in *Saxlehner vs. Eisner & M. Co.*, 179 U. S. 19, where the use of the word "Hunyade," used in connection with other words by defendant, was in question, the Court sustained complainant's claim to the exclusive use of the word, and it was said (p. 33): "The reports are full of cases where bills have been sustained for the infringement of one of several words of a trade mark."

Unless there be something in the claim of defendants that the use of the word as part of their corporate title authorizes the attachment of its name (including the word "Eureka") to the goods sold in competition with complainant, then the use of the name or word, either alone or in connection with any other words on these goods, must be enjoined. I can see no difference or distinction in law between the appropriation of the benefit of a trade mark name or word by using it as part of a corporation name stamped on the competitive goods, and its appropriation by use in connection with other words or phrases, as was done in the "Akron" case and in the Rogers case. Even if the addition of the other words in its title had been such as to clearly indicate that complainant and not defendant made the "Eureka Goods" in question, yet, as defendant, when it assumed this name, was unknown to dealers in these goods, the effect of placing the familiar name on them was, according to the doctrine of several well-considered cases, to give defendant the benefit of the well-established reputation of the articles and to derive a greater benefit from their fraud. *Shaver vs. Heller, &c.*, 821, 823. *Menendez vs. Holt*, 128 U. S. 514, 521 (1858). But there was nothing in the other words of defendant's corporate title which indicated clearly that its goods, on

which the name "Eureka" appeared, were not complainant's goods, or goods of the same class. For the main word by which complainant was known in the trade for its goods was as the "Eureka" Company, and the words "Fire Hose" or "Rubber Manufacturing" are merely descriptive of the business of the company. As the "Eureka" goods, or most of them on the market, were partly composed of rubber, they were certainly the product of a rubber manufacturing company, and in the trade these words would not of themselves be likely 10 to distinguish defendant from complainant; the words "Trenton, N. J.," as indicating the place of manufacture, would have little or no effect for purposes of distinguishing the makers of the goods, for both companies had offices in New York City, from which orders were taken, and although complainant's factory was in fact in New Jersey, the place of actual manufacture would probably be unknown to many of their customers. The proofs show that while in the trade complainant's corporate name always included the word 20 "Eureka," the other words were often misstated and sometimes omitted, and the confusion between complainant and defendant companies, which, in some cases, is proved to have occurred in the trade, resulted, as I think, from the fact that the defendant had adopted the word "Eureka" in its title. It was the main word of the title—its catch-word, so to speak, which the trade identified with the maker of the goods, rather than the other descriptive words of the title, which are often misstated. If this incorporation of complainant's trade 30 mark word in defendant's corporate title is an infringement of the trade mark, then complainant is entitled to protection by injunction. This protection is granted without regard to the intent of the infringer, because a fraudulent intent to deceive the public and appropriate the benefit of the trade reputation of another is conclusively presumed, from the using of the name or mark after request to desist, although the absence of

such intent may, in some cases, be a defence to an action for damages. *Paul Trade Marks, sec. 23 and cases cited; Lawrence Mfg. Co. vs. Tenn, Mfg. Co., 138 U. S. 537, 548 (1891); Hier vs. Abrahams, 52 N. Y. 519, 526 (1880)*. Complainant is entitled to enjoin defendant from using the word "Eureka" as part of its corporate title, or in any form on any of the hose or other class of goods sold in competition with complainant, which were manufactured or sold by complainant
10 with that name marked on them at the time of defendant's incorporation.

Second. Is the complainant entitled to enjoin, either wholly or to a limited extent, the use of the word "Eureka" in defendant's corporate name? The right to this relief is based on two grounds. *First*, that irrespective of complainant's right to any exclusive use of the word as a trade mark, the defendant's use of the name or word "Eureka" in connection with its corporate title, as describing or indicating the origin of
20 its goods manufactured in competition with complainant, constitutes unfair trade or competition. The *second* ground is that the selection of the name and use of the name is a violation of the eighth section of the corporation act, because it leads to uncertainty or confusion. The claim to this relief upon the *first* ground is broader than the claim to enjoin the use of the name or word on the goods themselves, or in connection with other words, as part of its title or otherwise, which is a strictly trade-mark use of the word,
30 and the claim extends to its use of the name in any manner and for any purpose, and on the goods or otherwise, so long, at least, as defendant continues the competition with complainant's goods. The contention is that because of the reputation which, to the knowledge of defendant, had been given to "Eureka" goods in the market, by complainant, the selection of this name as part of defendant's corporate title, for use in its advertisements, circulars, letterheads, signs, or other-

wise, for marketing goods in competition with complainant, is in itself unfair competition, without regard to any actual fraudulent intention of the defendant in the adoption or use of the word in its corporate title, and it is further contended that the facts proved show an actual fraudulent intent on the part of the defendant to avail itself of complainant's trade reputation in these goods. If such fraudulent intent to profit by complainant's trade reputation in these competitive goods existed, and the corporate name adopted was calculated to deceive, then the use of the name to the injury of the complainant must be enjoined. This principle was declared by the Court of Errors and Appeals, in *International Silver Co. v. William H. Rogers Corporation* (March, 1905), and the use of an individual's own name in a corporation of which he was an incorporator and officer was enjoined, because it was satisfactorily shown that it was voluntarily selected and for the purpose of making an unfair use of it in competition with complainant. Where the use complained of is that of the use of defendant's own name, either individually or as part of a corporate title, courts have differed upon the question whether fraudulent intent in the use of the name must be shown in order to entitle complainant to an injunction, and the status of the authorities on this important question is thoroughly examined by Vice-Chancellor Stevens, before whom the Rogers case was heard, in his opinion, 57 *Atl. Rep.* 1037 (February, 1904). He concluded that the whole question of unfair competition by the use of names or words, of which complainant claimed a benefit, by reason of trade reputation given to them exclusively by it, was reduced to the single substantial inquiry, whether the defendant was in fact, by the use of the name or word, representing his goods as the goods of the complainant, and that if he was so representing his goods, then, by the weight of authority, fraudulent intent in the use need not be proved to obtain an injunction, although it might

be necessary in an action for damages for the false representation. The application of this rule as to the proof required to show fraudulent intent in the use of the name is brought into question where the name used by the defendant is either his own or a name which is part of the common stock of the language, such names being both classes of words which *prima facie* he is entitled to use, subject, however, to the qualification that he must so use them as not to represent (either
10 intentionally or otherwise) his goods to be those of another whom he knows to be using the name. In such cases, proof of other facts than the mere choice of the name may be necessary to justify either the presumption or conclusion that the use of the name by defendant is for the purpose of representing his goods to be the goods of complainant, and therefore unfair competition. But where, as in the present case, the distinctive feature of the corporate name selected by defendant was an arbitrary name, and was the trade name
20 long established by complainant for those goods which defendant manufactures in competition, then the question which arises is whether any proof of fraudulent intent or unfair competition is necessary beyond the mere selection and use of the name, with the intention of competition in those goods. In this class of cases, involving the purely voluntary selection of name, the selection of an arbitrary name to which another has given a trade reputation or value, in connection with
30 the very class of goods defendant intends to put on the market, under a name containing the arbitrary or trade name, would seem to be ordinarily of itself sufficient proof of unfair competition, without further proof of fraudulent intent. The principle applicable in this latter class of cases, and the distinction in matter of proof necessary in the two classes, is stated in the leading case, *Burgess v. Burgess*, 22 L. J. Ch. N. S. 675 (1854), by Ld. Turner, which has often been referred to as clearly declaring the law on the unfair use of

trade names. He says (p. 678), "Where a person is selling goods under his own name, and another person, not having that name, is using it, it is clear that he so uses it to represent the goods sold by himself as the goods of another, but where the two persons have the same name, it does not follow that because the defendant sells goods under his own name, and it happens that the plaintiff has the same name, he is selling goods as the goods of the plaintiff." In the report of the same case in 3 *DeG. M. & G.* 896, 905, the language used is, "it may be presumed," instead of "it is clear," but the report in 17 *Jurist* 293 agrees with the *L. J. Rep.* In *Fuller v. Huff*, 104 *Fed. Rep.* 141, 145, (*C. C. A.* 1900), it was said that the unnecessary use of a name long used previously by another in the same business, and identified with its product, was likely to deceive the public, although used with prefixes or suffixes, and the manifest tendency to deception authorized an injunction without proof of any instance of actual deception. In *Cellular Clotting Co. v. Maston*, 1899, *App. Cas.* 326, 333, the following statement of the law was approved: "In such a case (where a trader selects an invented name to distinguish his goods from those of other traders) the mere fact of the use of the arbitrary sign by a rival trader raises a presumption of a design to pass off his goods under false colors, which it is not easy to displace." The voluntary selection and use of the arbitrary name or word "Eureka" as part of the defendant's corporate name, with the intention or purpose (in part) of competing with complainant in the sale of goods for which complainant had, to the defendant's knowledge, already given a trade reputation in the market under this name, must, in the absence of other evidence to control or explain it, be presumed to have been done with the intent to profit by complainant's trade reputation in these goods, and no further proof of fraudulent intent is necessary to entitle complainant to an injunction against the use of the name

to its injury. The complainant contends, however, that on the whole evidence such actual fraudulent intent on the part of the defendant is made out, and I think the claim is well founded. Of the defendant's knowledge of the trade reputation of complainant's goods, and of its intention to use the name in the sale in competition with complainant, the proof is clear. Mr. Lambert, who was one of the promoters of the defendant company, and is now its general manager, had been in the
10 rubber business for nearly twenty years, and was acquainted with the general trade in cotton rubber-lined hose throughout the country, and especially with the complainant's manufacture. Mr. Cook, one of the incorporators, and now the president of the defendant company, had also been engaged for many years in another company which manufactured similar goods, and had some business dealing or acquaintance with complainant's manager. Another of the incorporators had also been connected with the same company. When
20 the corporate name of defendant was selected, the incorporators knew of the complainant's corporate title, "The Eureka Fire Hose Company," and made the selection of their own title in the view that, notwithstanding complainant's name, they were entitled to do so. This fact appears from the letter of their solicitor, written to complainant's solicitor, November 26th, 1902, in reply to a request on complainant's behalf to drop the name "Eureka," either in its corporate title or the goods manufactured in competition. The complainant's arti-
30 cles of incorporation declared its object to be (among other things) "to carry on the business of manufacturers of fire and other hose and knit and woven fabrics and woven goods, and *all goods of which rubber is a component part, and the various materials entering into the manufacture of any and all such goods.*" Defendant's articles declare its object (among other things) "to make, purchase and sell rubber articles and *goods of every kind and description of which rubber, or other*

like gum, is a component part, and the various materials entering into the manufacture of any and all such goods." This similarity of language indicates that the complainant's charter may have been in the hands of the draftsman of defendant's charter, who was the person who made inquiry at the office of the Secretary of State. Before the erection of its factory and putting its goods on the market, Mr. Lambert, as defendant's manager, prepared a preliminary catalogue, in which attention was specially called to defendant's goods as 10 "Eureka Goods," by a marginal notice in the catalogue printed in a large separate block, with large capital letters, reading, "How to tell Eureka Goods." These directions, "How to tell Eureka Goods," thus specially called to the attention of the trade, gave directions only as to the hose of the defendant company, which were to be branded by its tri-colors, red, white and blue rings encircling the circumference of the hose, with its name and brand. In its letterheads the general style of complainant's letterheads was followed, with 20 the picture of a factory from a particular point of view, giving a similar general effect. On these letterheads the word "Eureka" in the corporate title is most prominently and separately printed above, and directly under it is a section of hose with red, white and blue circles, and the word "Eureka" only of its title appearing on the upper circle. On its sign at the New York office the word "Eureka" in the corporate title is also lettered separately and prominently in a manner to attract 30 attention. Under these circumstances, the case would seem to be one where, if the actual intent is important, the burden of showing that the selection and use of this word in defendant's title was not made for the purpose of deriving some benefit in the competition with complainant in "Eureka goods" is upon the incorporators. None of them have been called, and the case of the defendant upon this point rests upon the evidence of Mr. Lambert alone. So far, therefore, as the case de-

pendes upon defendant's intention in the adoption or use of the name, it must be rested on his evidence, and the conclusion to be drawn from his evidence and actions. He gives no direct explanation or statement of the reason for adopting the name, and his evidence shows apparently that he considered the only trade mark or trade name to which complainant was entitled in the trade to be the special "brand" names fixed on its varieties of goods, and that it had no special right to
10 the name "Eureka," except as one of its special brand names, and his whole course in the use of the word in the exploitation of defendant's business proceeded manifestly on this view. His evidence as to the effect of the names of special brands as indicating in the trade the makers of the goods, is that, although well-known brands which have been on the market for any length of time are probably better known by the specified brands than by the names of the makers, and are usually referred to by the brand name, yet brands not so
20 well known are usually called by the names of the makers. The fair conclusion from this evidence is, I think, that the names of the makers in the trade, as usually applied to their goods—*e. g.*, the "Eureka goods," the "Boston Belting goods," and "Goodrich goods," etc.—first establishes the reputation of the brands in the trade, and that the brand name itself afterwards often becomes a sufficient indication of the maker. Lambert says that the complainant's goods are perhaps more generally known by their brand names
30 than those of any other manufacturers in the market. This indicates, I think, that in his judgment any brand put on the market originally as "Eureka goods" acquires afterward a special reputation in the trade, by which the name of the brand alone designates the maker. Lambert's admitted familiarity with the trade and with complainant's reputation for the goods put on the market originally, at least, as Eureka goods, his subsequent conduct, as manager of the defendant, in the

use of this word "Eureka" in the catalogue, letterheads and advertisements in putting on the market goods manufactured in competition with complainant; the persistence in using the name after notice that confusion had already occurred, taken in connection with the failure to give any explanation or statement of the reasons for selecting the name, warrant the conclusion that the defendant's adoption and use of the word "Eureka" as part of its corporate title, and otherwise, was, in fact, for the purpose of availing itself to some extent of the trade reputation complainant had given to goods marketed under that name, and actual fraudulent intent is proved. 10

On the question of the violation of trade mark or trade name, no weight can be given to the certificate or reply of the corporation clerk on defendant's inquiry as to its corporate name, for evidently the replies to such inquiries concern only an objection apparent in the name itself, without other consideration, and the action of defendant in acting on this reply must be, of course, at its own risk, when its adoption of the name is properly brought in question. 20 As to the extent to which the use of the name should be enjoined, the protection of complainant's trade name in connection with the marketing of goods manufactured in competition, is the limit of its rights. The bulk of defendant's business is in rubber mechanical goods not dealt in by complainants, and for the purposes of this business, it has the right to use the word as part of its name or otherwise. But so long as it puts on the market goods in competition with complainant, the use of the word in its name or otherwise in connection with these goods, seems, under the evidence in the case, necessarily calculated to mislead the public, and to give defendant some advantage of complainant's trade reputation. 30 I cannot see how complainant can be sure to receive the full benefit of the trade name to which it is entitled, except by enjoining defendant's use of the name in its title or otherwise, so long as it

continues the manufacture or sale of the goods sold in competition with complainant. I think, however, the injunction should extend only to the goods or class of goods which complainant was putting on the market under its name at the time of defendant's incorporation, and if complainants claimed a wider injunction, I will hear them on this point. The form of a limited injunction was not specially considered at the argument, and I will settle this upon notice if necessary.

10 *Third.* As to the complainant's right to enjoin the use of defendant's corporate title under the statute, this right exists only if the name assumed is so nearly similar to the existing corporate name of complainant "as to lead to uncertainty or confusion." The evidence in the cause does show that the use of the word "Eureka" in defendant's corporate name has led to some confusion, but in the main this confusion has occurred in reference to dealings—correspondence, orders, etc.—in the goods
20 sold in competition. If the use of the word is enjoined so far as is necessary to protect complainant in their business, it is very doubtful whether any confusion or uncertainty will result, other than that which complainant unavoidably incurs by the insertion in its title of a word which is also included in the corporate name of many other corporations engaged in different business. On the evidence produced in this cause, I will not advise a general decree that the use of defendant's corporate title be enjoined. The denial of this relief, however, is
30 for such relief in case it should appear that under the application of the limited injunction granted, confusion or uncertainty to the injury or the complainant exists or continues.

Fourth. As to the use of the tri-color device by the defendant, the case now presented shows no ground for enjoining the defendant. Complainant's use of the colors has been confined to its fabrics of linen hose and cotton hose or jackets, the lines of dyed threads extend-

ing longitudinally through the fabric. These colors seem to have been originally adopted because of the rules of an Underwriters' Board, which required a color distinction of some kind to indicate its approval of the hose as sufficient for the use of factories or buildings insured by its members, and the tri-color is used on only a portion of complainant's goods. The defendant on its cotton fabrics uses different color lines, purple or orange and green. Its only use of the red, white and blue on its products is on its rubber hose, by printing 10 them with a plate three or four inches long and an inch wide, on or near the ends of the section of rubber hose. It also uses these colors on its letter-heads, catalogues and envelopes. Complainant's only ground to enjoin specially the use of the tri-color, must be on the basis of trade mark rights, and assuming that it has such rights, I do not think an infringement of them by the defendant has been shown, and this special relief sought by the amended bill must therefore be denied. Irrespective of any trade mark, right or claim the use of the 20 tri-color by defendant is of some importance in the cause in connection with the defendant's use of the complainant's trade mark and trade name, "Eureka," in the sale of hose, as bearing on defendant's intent in using the trade name, but it has not been shown to be a ground for independent relief. A decree will be advised in accordance with this opinion.

FINAL DECREE.

(Filed June 7th, 1905.)

This cause coming on to be heard on pleadings and proofs in the presence of Randolph Perkins, Gilbert Collins and Richard V. Lindabury, of counsel for complainant, and John V. B. Wicoff and William M. Lanning,

of counsel for the defendant, and the Court having heard and considered the evidence and the argument of counsel, and having taken time for consideration and being of opinion that the complainant has as against the defendant an exclusive right to the use of the word or name "Eureka" as applied to conductive hose, and that the use of this name or word by defendant in the marketing by defendant of conductive hose is an infringement of said complainant's right to the exclusive use of
10 the said word or name "Eureka" in that connection; and that the use of the word or name "Eureka" by the defendant in its corporate title or otherwise in connection with the marketing of conductive hose in competition with the complainant was and is unfair and fraudulent competition.

It is thereupon, on this sixth day of June, in the year of our Lord one thousand nine hundred and five, by his Honor, William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed and the said
20 Chancellor does, by virtue of the power and authority of this Court, hereby order, adjudge and decree that the said defendant, its officers, directors, agents and attorneys be and they are hereby perpetually enjoined and restrained from directly or indirectly using the word "Eureka" as part of the corporate title of the defendant, or in any form or combination, on or in connection with the advertisement or sale of conductive hose; and also from using the word "Eureka" in the corporate title of
30 the defendant or otherwise so long as the defendant manufactures or sells or continues to manufacture or sell conductive hose.

It is further ordered that a perpetual injunction do issue accordingly.

And it is further ordered that the application of the complainant for a general decree enjoining altogether the use by the defendant of its corporate title be denied, but without prejudice to the filing of a bill hereafter to enjoin such use in case it should appear that under the application of the limited injunction hereby granted con-

fusion or uncertainty to the injury of the complainant exists or continues.

And it is further ordered that the application of the complainant for an injunction restraining the use by the defendant of the red, white and blue tri-color device described in said complainant's bill of complaint on the goods manufactured by the defendant, and on its letter-heads, envelopes and catalogues, be denied.

And it is further ordered that either party have leave to apply to this Court at the foot of this decree for further directions if it should appear to be necessary in order to effectuate this decree or to protect the rights of either party thereunder.

And it is further ordered, adjudged and decreed that the said complainant recover against the said defendant its costs of this suit to be taxed and that execution do issue according to the practice of this Court.

W. J. MAGIE, C.

Respectfully advised.

JOHN R. EMERY,
Vice-Chancellor.

20

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

EUREKA FIRE HOSE COMPANY,
Complainant (Respondent),
and

THE EUREKA RUBBER MANUFACTURING COMPANY,
Defendant (Appellant).

} On Appeal.

30

PETITION OF APPEAL.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of The Eureka Rubber Manufacturing Company, the appellant in the above-stated cause, re-

spectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the sixth day of June, in the year of our Lord, one thousand nine hundred and five, wherein the said Eureka Fire Hose Company was complainant, and the said The Eureka Rubber Manufacturing Company was defendant, in this respect, to wit: That the said decree adjudged that the said defendant,
10 its officers, directors, agents and attorneys be and they are thereby perpetually enjoined and restrained from directly or indirectly using the word "Eureka" as part of the corporate title of the defendant, or in any form or combination, on or in connection with the advertisement or sale of conductive hose, and also from using the work "Eureka" in the corporate title of the defendant or otherwise, so long as the defendant manufactures or sells or continues to manufacture or sell conductive hose.

It further ordered that a perpetual injunction do issue
20 accordingly.

And it further ordered that the application of the complainant for a general decree enjoining altogether the use by the defendant of its corporate title be denied, but without prejudice to the filing of a bill thereafter to enjoin such use in case it should appear that under the application of the limited injunction thereby granted confusion or uncertainty to the injury of the complainant exists or continues.

And it further ordered, adjudged and decreed that
30 the said complainant recover against the said defendant its costs of said suit to be taxed and that execution do issue according to the practice of said Court.

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees or orders aforesaid, upon the ground that the same is erroneous, for that the said decree should have adjudged that the defendant, The Eureka Rubber Manufacturing Company, had not violated the complainant's rights in any

respect, and that the said complainant was not entitled to relief and should have dismissed the complainant's bill, with costs.

Your petitioner therefore prays that the said decree of the said Chancellor may be reversed, set aside, and for nothing holden in the particulars aforesaid, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

JOHN V. B. WICOFF,
Solicitor of Appellant. 10

E. R. WALKER,
Of Counsel with Appellant.

(Filed June 21st, 1905.)

ANSWER TO PETITION OF APPEAL.

(Filed July 13th, 1905.)

20

The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the 6th day of June last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent. 30

CROUSE & PERKINS,
Solicitors for and of Counsel with Respondent.

Complainant's Exhibits.

EXHIBIT "C 17."

Oct. 31, 1902.

Eureka Ruber Manfg. Co.
Trenton, N. J.

10 GENTLEMEN :—I write you on behalf of my clients,
the Eureka Fire Hose Co., of Jersey City and New
York City.

Your issued circulars, etc., show that you propose to
manufacture the same general line of goods as my
clients; and you have adopted for this business, their
trade name. This they will not permit if they can pre-
vent it. I am instructed by them, therefore, to request
that you desist from the use of the word "Eureka" either
in your corporate name, or in connection with goods
20 which you may manufacture in the same line with my
clients. Already much confusion in a business way has
resulted therefrom. We write you now so that you may
have ample time and opportunity to make the change
requested, advising you that we shall be compelled to
take legal steps to enforce our request, should you de-
cline to accede to it.

Asking the favor of an early and definite reply, I am,

Respectfully yours,

MARCELLUS BAILEY.

30

EXHIBIT "C 17½."

Nov. 18, 1902.

The Eureka Rubber Mfg. Co.,
Trenton, N. J.

GENTLEMEN :—I am as yet without reply to my letter

to you of the 31st ulto., relative to the use by you of the trade name of my clients, the Eureka Fire Hose Co.

I again ask of you the favor of a prompt reply.

Respectfully,

MARCELLUS BAILEY.

EXHIBIT "C 18."

10

Hugh H. Hamill, } Law Office. 26 West State Street,
Richard C. Chamberlain, } Trenton, N. J.

November 26, 1902.

*To Marcellus Bailey, Esq.,
501 F. St., N. W.
Washington, D. C.*

DEAR SIRS—The Eureka Rubber Manufacturing Company have sent to me your communication of October 31st and your favor of November 18th, both addressed by you as attorney for the Eureka Fire Hose Company, the former acknowledged by the Eureka Rubber Manufacturing Company on November 11, 1902, and the latter received by it November 19, 1902. 20

I note that in your said favor of October 31st you request that the Eureka Rubber Manufacturing Company desist from the use of the words "Eureka" either in its corporate name or in connection with goods which it may manufacture, and further, you state, unless such change is made you will be compelled to take legal steps to enforce your request, if the Eureka Rubber Manufacturing Company decline to accede to it. 30

At the time of the incorporation of the Eureka Rubber Manufacturing Company, it was the opinion of the incorporators and the opinion of the authorities of the State of New Jersey having such matters in charge, that the Eureka Rubber Manufacturing Company was a title which the new company had a right to although it was

then known there was a corporation of the State of New Jersey as appeared by the records in the Secretary of State's office, known as the Eureka Fire Hose Company.

We have not changed our opinion. We have no intention of using your trade name. We do not propose to brand any goods made by use with the brand "Eureka." We desire to live in perfect harmony with our neighbors, our business allies and our commercial competitors.

10 Perhaps there is more than is now apparent in your letters that should be considered by me in this matter. I do not quite understand what you mean by your trade name. Do you refer to your title as a corporation of the State of New Jersey or to a trade mark which you have in some other way acquired? My clients desire to meet this whole question fairly and as far as may be possible, meet your views. Will you give me further information in the premises, in order that I may take the matter up with more intimate knowledge?

20 Very truly yours,
H. H. HAMILL.

EXHIBIT "C 19."

Nov. 28, 1902.

H. H. Hamill, Esq.,
26 West State St.,
30 Trenton, N. J.

DEAR SIR—I am in receipt of your letter of the 26th inst.

I have received no prior acknowledgment of either of my two letters to the Eureka Rubber Manfg. Co.

By trade name I mean, of course, the business name by which the party is known—a name in our case, of nearly thirty years standing. And for that name we believe the party—whether a corporation or a natural

person—is entitled to protection; just as much so in the one case as the other.

I note that you say “we do not propose to brand any goods made by us with the brand ‘Eureka;’” but I am quite unable to see why if you are entitled to the business name you have adopted you may not place it on your goods.

For more than a quarter of a century “Eureka” has been the distinguishing characteristic of our business name. During that time we have been known as, and letters intended for and received by us have been addressed indifferently to, the “Eureka Rubber Co.” and the “Eureka Fire Hose Co.”—but *always* Eureka. 10

You propose to become our active competitors, in the same line of business, and the first thing you do is to appropriate the characteristic of our trade name. Already you have received a large number of letters intended for us. I have now in my possession, letters relating to valuable trade matters and trade secrets, which have first been opened by your company, and then forwarded to us. 20

It is of no moment that you have not imitated precisely our name. Similarity not identity is the usual recourse of a party seeking to benefit by the good name of another. If that was not the intent of your clients, then we are wholly at a loss to understand why they selected “Eureka.”

I will be glad to have your early and definite reply.

Very truly yours,

MARCELLUS BAILEY. 30

EXHIBIT “C 20.”

TRENTON, N. J., December 10, 1902.

To Marcellus Bailey, Esq.,
Washington, D. C.

DEAR SIR:—Your favor of November 28th is received and I have laid the whole matter before some of our

people for their joint consideration, and in the course of two or three days I will communicate with you again. I think it fair to you and fair to them that they should have the information contained in your favor of the 5th.

Very truly yours,

HUGH H. HAMILL.

10

EXHIBIT "C 21."

TRENTON, N. J., December 12, 1902.

To Marcellus Bailey, Esq.,

501 F. St., N. W.

Washington, D. C.

DEAR SIR:—The subject-matter of your last letter dated November 28, 1902, and addressed to me, has been carefully considered by the Directors of the Eureka Rubber Manufacturing Company. They believe, both in
20 fairness and law, they are entitled to the use of the name heretofore adopted; that no substantial confusion has heretofore occurred or seems likely to occur; nevertheless, for the sake of neighborliness and good feeling they are willing to concede something to the fears of your clients. They have determined that where their name is used in the course of their business, the words "Trenton, N. J." shall be added in letters of equal prominence with the name; this being conceded not as a right but as a courtesy, they think your clients should be satis-
30 fied.

I am, dear sir,

Most respectfully yours, etc.,

HUGH H. HAMILL.

EXHIBIT "C 30."

NEW YORK, Dec. 9, 1903.

Mr. H. P. Mathews, Clerk,
Ilion, N. Y.

DEAR SIR:—Replying to yours of the 8th, we enclose you copy of letter sent you a few days ago, which evidently you have not received. Sample of rubber hose is going forward to-day from our factory. We are glad to hear that chances are good for obtaining the order, and thank you very much for the interest you have taken in this matter.

Respectfully yours,
THE EUREKA RUBBER MFG. CO.,
S. V. B. BREWSTER, Mgr.

G

EXHIBIT "C 31."

20

NEW YORK, Dec. 9, 1903.

Mr. Hugh Mathers, Clerk,
Ilion, N. Y.

DEAR SIRS—In reference to your call of to-day we confirm prices to Village of Ilion on hose as follows:

COTTON HOSE.

2½" S. J.* Commodore,	32 cts. ft. cpld.	
Guaranteed to 250 lbs.		30
test pressure; for light service.		
2½" D. J.* Admiral,	85 cts. ft cpld.	
Guaranteed to 400 lbs.		
test pressure, and against defects in manufacture for 4 years service.		

- 2½" D. J. Commodore,65 cts. ft. cpld.
Guaranteed for 350 lbs.
pressure and against
defects in manufacture
for 3 years service.
- 2½" Rubber Covered Cotton Hose,..40 cts. ft. cpld.
Guaranteed to 250 lbs. test pressure.
- 2½" 4 ply Acme Rubber Fire Hose,....\$1.00 ft. cpld.
made with 5 ply capped ends,
and guaranteed to 400 lbs. test
pressure, and against defects in
manufacture for 4 years service.

10

Respectfully yours,

• THE EUREKA RUBBER MFG. CO.,
S. V. B. BREWSTER, *Mgr.* (signed)

*S. J.—Single Jacket.

*D. J.—Double Jacket.

20

EXHIBIT "C 33."

NEW YORK, August 11, 1903.

Town of Kearney, N. J.,

Mr. Theo. G. Wildman, Clerk,

DEAR SIR—In accordance with your call for Fire
Hose, we herewith quote you on our 2½" Double
Jacket, "Commodore" brand of Cotton Hose
65c per ft. We guarantee this hose to stand 400 lbs.
test pressure, and against all imperfections of manufac-
ture for four years service.

30

Yours respectfully,

THE EUREKA RUBBER MFG. CO.

S. V. B. BREWSTER *Mgr.*

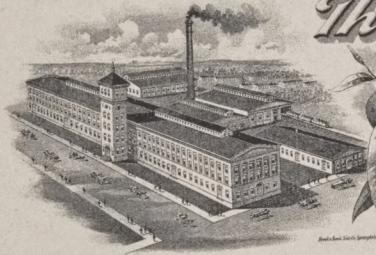
G

EXHIBIT "C 38 HOWARD."

GEO. R. COOK, President.

WM. S. HANCOCK, Vice President.

J. A. LAMBERT, Secy. & Genl. Mgr.



FACTORY & GENERAL OFFICES.
TRENTON, N. J.

The Eureka

CABLE ADDRESS.
REKARUB.

RUBBER MANUFACTURING CO.

OF TRENTON, N. J.

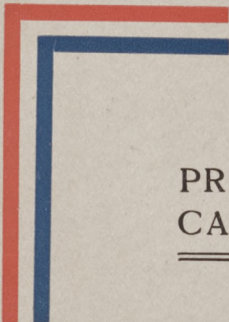
**MANUFACTURERS
MECHANICAL RUBBER GOODS,
AND RUBBER CARRIAGE DUCKS AND DRILLS.**



CHICAGO STORE, 248 RANDOLPH ST.
NEW YORK STORE, 55 WARREN ST.
BOSTON STORE, 276 DEVONSHIRE ST.

TRENTON, N. J.

EXHIBIT "C 50."



GEO. R. COOK, President
WM. S. HANCOCK, Vice-Pres.
J. A. LAMBERT, Sec'y and
Gen'l Manager

PRELIMINARY
CATALOGUE

THE EUREKA
RUBBER MANUFACTURING
COMPANY

(ESTABLISHED 1902)

Manufacturers of

INDIA RUBBER GOODS

FOR MECHANICAL PURPOSES

Factories and Main Offices

TRENTON, N. J.

BRANCH OFFICES
AND STORES:

CHICAGO, ILL.

248 Randolph Street

NEW YORK

56 Reade Street

BOSTON

276 Devonshire Street




EXHIBIT "C 50."

INTRODUCTION

PRELIMINARY CATALOGUE

Finding that it will take much more time and labor than at first anticipated to arrange and publish a trade catalogue, such as we intend to distribute, we have decided to issue this preliminary edition so as to introduce the Company and its brands to the trade. We intend issuing the most complete, best arranged, and most substantially bound catalogue thus far produced. A number of these catalogues will be put up in special binding, and we invite the requests of our friends and the trade for copies of this special edition.

THE EUREKA RUBBER MFG. CO.

EXHIBIT "C 50."

INTRODUCTION

In introducing itself to buyers of mechanical rubber goods, The Eureka Rubber Mfg. Co. wishes to declare its intention to manufacture none but reliable grades of goods. Its desire is to build up a select trade, and to make an enviable reputation for making only satisfactory grades, trusting in this manner to insure a permanency of the high standing it seeks among manufacturers of mechanical rubber goods.

Having ample capital, a most favorable location for freight shipping and receiving facilities, and a strictly modern and up-to-date plant equipped with the best and most improved machinery, our close proximity to New York, Philadelphia and the other large eastern trade centers will enable us to offer sterling values and exceptionally quick deliveries to the trade at these points.

For the accommodation of western trade, we will maintain a branch office and store at Chicago. This arrangement will also be followed at New York, Boston and Philadelphia, at all of which points well assorted stocks will be carried, thus enabling us to take special care of all rush orders for regular goods, which will be shipped at same prices as from factory.

Connected with the Company, and active in its organization and management, are men of many years experience in the manufacture and sale of mechanical rubber goods. It is the ambition of these men to build on the lasting foundation of mutual confidence and satisfactory dealing with its customers, a business which in the course of time, it is hoped, will be second to none in either volume or reputation.

We bespeak the kindly consideration of the trade, and shall be pleased to receive inquiries either through our traveling representatives, or direct to our home office, or branch stores.

THE EUREKA RUBBER MFG. CO.

OUR BRANDS

To facilitate reference, and to prevent possibility of mistakes, we have adopted a novel plan in the selection of our brands. We take the initial letter of each brand to indicate the grade. Thus the brand of which the initial letter is "A" is our best grade clear through in every line manufactured. The second grade brand has for its initial the letter "B," and so on down the list. By this arrangement the grade of goods is at once determined beyond mistake, and the customer has only to remember one of the three distinctive marks, name of the brand, initial letter or grade, to insure his order being correctly executed.

HOW
to tell
Eureka
Goods?

Besides the method of initial letters to indicate grades, we have decided on another plan to familiarize the trade with goods of our production. Our hose will all be branded in two places—about a foot or two from the end of each section. The brands will take the form of three colored rings—red, white and blue—completely encircling the circumference of the hose. On these colored bands or rings, forming a portion of the cover of the hose, will appear our name and brand. Each section of hose in addition, will be tied with red, white and blue bands, with our name stenciled in the white band. The same idea will be carried out as far as possible in the branding and putting up of all goods of our production. In this manner it will be an easy matter to recognize our goods, and we shall endeavor to not alone have this recognition based on the novelty of our brands, but on the superior quality of our products as well.

THE EUREKA RUBBER MFG. CO.

EXHIBIT "C 50."

THE EUREKA RUBBER MANUFACTURING CO.

RUBBER BELTING

Our Brands:

"Acme"

(Our Best)

"Buffalo"

(Strictly High-Grade)

"Capitol"

(An Excellent Quality)

"Durable"

(Well Made and Serviceable)

EQUALITY

"Economy"

(A Good Cheap Belt)

THE EUREKA RUBBER MANUFACTURING CO.

Standard Price List Rubber Belting

Width in Inches	2-Ply	3-Ply	4-Ply	5-Ply	6-Ply	7-Ply	8-Ply	10-Ply
1	\$0 07	\$0 09	\$0 11	....	....	....	....	....
1¼	09	11	14	....	....	....	....	....
1½	11	13	16	\$0 19	....	....	....	....
1¾	13	15	17	21	....	....	....	....
2	15	17	21	26	\$0 31	....	....	....
2½	18	22	26	32	39	....	....	....
3	22	26	31	38	46	....	....	....
3½	26	30	37	46	55	....	....	....
4	30	34	42	52	63	\$0 73	....	....
4½	33	39	47	58	70	82	....	....
5	36	43	52	65	78	91	....	....
6	43	52	62	77	93	1 08	\$1 24	....
7	51	60	73	91	1 09	1 27	1 46	....
8	59	70	84	1 05	1 26	1 47	1 68	\$2 10
9	67	80	95	1 18	1 42	1 66	1 90	2 36
10	75	90	1 07	1 33	1 60	1 87	2 14	2 66
11	83	1 00	1 18	1 47	1 77	2 06	2 36	2 94
12	91	1 08	1 30	1 62	1 95	2 27	2 60	3 24
13	1 00	1 18	1 42	1 77	2 13	2 48	2 84	3 54
14	1 08	1 28	1 54	1 92	2 31	2 69	3 08	3 84
15	1 16	1 38	1 66	2 07	2 49	2 90	3 32	4 14
16	1 25	1 50	1 78	2 22	2 67	3 11	3 56	4 44
18	1 41	1 70	2 02	2 52	3 03	3 53	4 04	5 04
20	1 58	1 90	2 26	2 82	3 39	3 95	4 52	5 64
22	1 76	2 12	2 52	3 15	3 78	4 41	5 04	6 30
24	1 96	2 36	2 80	3 50	4 20	4 90	5 60	7 00
26	2 15	2 60	3 08	3 85	4 62	5 39	6 16	7 70
28	2 35	2 84	3 36	4 20	5 04	5 88	6 72	8 40
30	2 55	3 10	3 64	4 55	5 46	6 37	7 28	9 10
32	2 75	3 35	3 92	4 90	5 88	6 86	7 84	9 80
34	2 95	3 60	4 20	5 25	6 30	7 35	8 40	10 50
36	3 15	3 85	4 48	5 60	6 72	7 84	8 96	11 20
38	3 35	4 10	4 76	5 95	7 14	8 33	9 52	11 90
40	3 55	4 35	5 04	6 30	7 56	8 82	10 08	12 60
42	3 75	4 60	5 32	6 65	7 98	9 31	10 64	13 30
44	3 95	4 85	5 60	7 00	8 40	9 80	11 20	14 00
46	4 15	5 10	5 88	7 35	8 82	10 29	11 76	14 70
48	4 35	5 35	6 16	7 70	9 24	10 78	12 32	15 40
50	4 55	5 60	6 44	8 05	9 66	11 27	12 88	16 10
52	4 75	5 85	6 72	8 40	10 08	11 76	13 44	16 80
54	4 95	6 10	7 00	8 75	10 50	12 25	14 00	17 50
56	5 15	6 35	7 28	9 10	10 92	12 74	14 56	18 20
58	5 35	6 60	7 56	9 45	11 34	13 23	15 12	18 90
60	5 55	6 85	7 84	9 80	11 76	13 72	15 68	19 60

EXHIBIT "C 50."

THE EUREKA RUBBER MANUFACTURING CO.

Special Coverless Rubber Belt

"Hug-Tite"

This is a special belt made of a lighter weight duck than used in the regular style of belting. A fine Parà friction is used. Thorough stretching and most careful workmanship and press work produce a belt which it is almost impossible to separate at the plies. There is no cover used, the outside finish being of the friction used between the plies. This belt is specially adapted for use in paper and pulp mills, and for all work where a very pliable belt is required as well as for high-speed machinery. It will hug the pulleys closely, as the name indicates, and thus transmit more power than the ordinary rubber belt. Where belts are crossed, used on quarter turns or subjected to severe tests of this character, we recommend the use of "Hug-Tite," guaranteeing that it will do the work satisfactorily.

THE EUREKA RUBBER MANUFACTURING CO.

PRICE LIST
OF
HUG-TITE RUBBER BELTING

Inch	3-Ply Per Ft.	5-Ply Per Ft.	7-Ply Per Ft.	9-Ply Per Ft.	11-Ply Per Ft.	13-Ply Per Ft.	15-Ply Per Ft.
1	\$0 08	.....	.....	.....	.....	.....	.....
1½	10	.....	.....	.....	.....	.....	.....
1½	13	.....	.....	.....	.....	.....	.....
2	17	\$0 19	\$0 24	.....	.....	.....	.....
2½	20	25	29	.....	.....	.....	.....
3	25	29	35	.....	.....	.....	.....
3½	29	34	41	.....	.....	.....	.....
4	34	38	47	.....	.....	.....	.....
4½	37	44	53	.....	.....	.....	.....
5	40	48	58	.....	.....	.....	.....
6	48	58	69	\$0 86	.....	.....	.....
7	57	67	81	1 01	.....	.....	.....
8	66	78	94	1 17	\$1 40	.....	.....
9	75	89	1 06	1 31	1 58	.....	.....
10	84	1 00	1 19	1 48	1 78	\$2 08	.....
11	93	1 11	1 31	1 64	1 97	2 30	.....
12	1 01	1 20	1 45	1 80	2 19	2 58	\$2 97
13	1 11	1 31	1 58	1 97	2 37	2 77	3 17
14	1 20	1 42	1 71	2 14	2 57	3 00	3 43
15	1 29	1 53	1 85	2 30	2 77	3 24	3 71
16	1 39	1 67	1 98	2 47	2 97	3 47	3 97
18	1 57	1 89	2 25	2 80	3 37	3 94	4 51
20	1 76	2 11	2 51	3 13	3 77	4 41	5 05
22	1 96	2 36	2 80	3 50	4 20	4 90	5 60
24	2 18	2 62	3 11	3 89	4 67	5 45	6 23
26	.....	2 89	3 42	4 28	5 13	5 98	6 83
28	.....	3 16	3 73	4 67	5 60	6 53	7 46
30	.....	.....	4 04	5 05	6 06	7 07	8 08
32	.....	.....	4 36	5 44	6 53	7 62	8 74
34	.....	.....	4 67	5 83	7 00	8 17	9 34
36	.....	.....	4 98	6 22	7 46	8 70	9 94
38	.....	.....	5 29	6 61	7 93	9 25	10 57
40	.....	.....	5 60	7 00	8 40	9 80	11 20
42	.....	.....	5 91	7 39	8 86	10 33	11 80
44	.....	.....	6 22	7 77	9 33	10 89	12 45
46	.....	.....	6 53	8 16	9 79	11 42	13 05
48	.....	.....	6 84	8 55	10 26	11 97	13 68
50	.....	.....	.....	8 94	10 73	12 52	14 31
52	.....	.....	.....	9 33	11 19	13 05	14 91
54	.....	.....	.....	.....	.....	13 61	15 56
56	.....	.....	.....	.....	.....	14 17	16 21
58	.....	.....	.....	.....	.....	14 73	16 86
60	.....	.....	.....	.....	.....	15 29	17 51

EXHIBIT "C 50."

THE EUREKA RUBBER MANUFACTURING CO.

RUBBER GARDEN HOSE

The following are Our Brands.
All made in $\frac{1}{2}$ -inch and $\frac{3}{4}$ -inch
in 3 and 4-Ply :

"Acme"

(Best Made)

"Buffalo"

(Superior Quality)

"Capitol"

(High Grade)

"Durable"

(Well Made and Serviceable)

"Economy"

(Excellent Value)

"Favorite"

(Reliable and Popular)

"Guarantee"

(Good for Light Pressure)

THE EUREKA RUBBER MANUFACTURING CO.

Garden Hose Brands (Continued)

Special Brands:

"Quarto" (4-Ply)

"Quinto" (5-Ply)

"Septo" (7-Ply)

The above Special Brands
are made of a lighter weight duck
than our regular brands.
Other materials and method of manufacture
being the same.

EXHIBIT "C 50."

THE EUREKA RUBBER MANUFACTURING CO.

RUBBER WATER HOSE

In the large sizes we make the following Brands:

"Acme"

(Perfection in Hose)

"Buffalo"

(A Superior Quality)

"Capitol"

(Excellent Value)

"Durable"

(Serviceable and Well-Made)

EQUALITY

"Economy"

(Good for Light Pressure)

THE EUREKA RUBBER MANUFACTURING CO.

WATER HOSE LIST

INTERNAL DIAMETER	2-Ply	3-Ply	4-Ply	5-Ply	6-Ply
½ inch.....	\$0 20	\$0 25	\$0 30	\$0 37	\$0 45
¾ "	25	30	37	46	55
1 "	33	40	50	62	75
1¼ "	42	50	62	77	93
1½ "	50	60	75	93	1 12
1¾ "	58	70	87	1 08	1 30
2 "	66	80	1 00	1 25	1 50
2¼ "	75	90	1 12	1 40	1 68
2½ "	83	1 00	1 25	1 56	1 87
2¾ "	92	1 10	1 37	1 71	2 05
3 "	99	1 20	1 50	1 87	2 25
3½ "	1 16	1 40	1 75	2 18	2 62
4 "	1 32	1 60	2 00	2 50	3 00
5 "	1 65	2 00	2 50	3 13	3 75
6 "	1 98	2 40	3 00	3 75	4 50
7 "	2 31	2 80	3 50	4 38	5 25
8 "	2 64	3 20	4 00	5 00	6 00
9 "	2 97	3 60	4 50	5 63	6 75
10 "	3 33	4 00	5 00	6 25	7 50

All intermediate sizes are charged at the list price of the next larger size; thus, 1½ inch will be charged at 1¼ inch price, etc.

EXHIBIT "C 50."

THE EUREKA RUBBER MANUFACTURING CO.

STEAM HOSE

Our Brands :

"Acme"

(A Perfect Hose)

"Buffalo"

(Superior—Special Construction)

"Capitol"

(Reliable—Carefully Made)

"Durable"(Serviceable—Recommended)
for Lighter Work

THE EUREKA RUBBER MANUFACTURING CO.

STEAM HOSE

In the manufacture of steam hose the greatest care and skill are exercised in selecting the materials, making up of each section and the compounding of the rubber in the tube or inner lining so that it will withstand the action of the steam and hot water for the greatest possible length of time. The duck is extra heavy and strong and the cover of a tough gum, different from that used in ordinary hose.

STEAM, BREWERS' AND AIR HOSE LIST

Inch	3-Ply	4-Ply	5-Ply	6-Ply	7-Ply	8-Ply
½.....	\$0 43	\$0 51	\$0 63	\$0 76	\$0 89	\$1 02
¾.....	51	67	83	1 00	1 17	1 34
1.....	67	83	1 03	1 24	1 45	1 66
1¼.....	85	1 04	1 30	1 56	1 82	2 08
1½.....	1 02	1 25	1 56	1 87	2 18	2 50
1¾.....	1 18	1 45	1 81	2 17	2 53	2 90
2.....	1 34	1 66	2 07	2 49	2 90	3 32
2¼.....	1 50	1 87	2 33	2 80	3 27	3 74
2½.....	1 66	2 08	2 60	3 12	3 64	4 16
3.....	2 00	2 80	3 50	4 20	4 90	5 60

Intermediate sizes will be charged at the list price of the next larger size.

EXHIBIT "C 50."

THE EUREKA RUBBER MANUFACTURING CO.

BREWERS' HOSE

In the manufacture of Brewers' Hose the two great essential points are to produce a tube and cover which will resist the action of the hot liquid and not burn, split or peel. We put a special compound in the tube of our Brewers' Hose. The cover is also specially compounded and made extra heavy to stand the wear and tear of hard usage.

Our Brands :

"Acme"

"Buffalo"

"Capitol"

"Durable"

AIR DRILL HOSE

Made specially for this work. Canvas covered, muslin or wire wound. Same Brands as Brewers' and Steam Hose.

AIR BRAKE HOSE

Made to comply with specifications of R. R. Co's under time and pressure guarantees.

Price List Same as Steam Hose

THE EUREKA RUBBER MANUFACTURING CO.

TUBING

PURE WHITE TUBING

Plain or Corrugated Surface

Made in 50-ft. lengths. 50 ft. in a box.
 $\frac{1}{16}$ " , $\frac{5}{64}$ " , $\frac{3}{32}$ " and $\frac{1}{8}$ " walls regular stock.

Int. Diam.	$\frac{1}{16}$	$\frac{1}{8}$	$\frac{3}{16}$	$\frac{1}{4}$	$\frac{5}{16}$	$\frac{3}{8}$
Per Foot ..	.04	.08	.12	.16	.18	.20
Int. Diam.	$\frac{7}{16}$	$\frac{1}{2}$	$\frac{5}{8}$	$\frac{3}{4}$	$\frac{7}{8}$	1
Per Foot ..	.23	.25	.30	.35	.40	.45

Special weight tubing made to order.

CLOTH INSERTION TUBING

RED COVER

We have special and most modern facilities for making this tubing in large quantities by machinery, thus insuring perfect uniformity of quality and finish.

Int. Diam.	$\frac{1}{8}$	$\frac{3}{16}$	$\frac{1}{4}$	$\frac{5}{16}$	$\frac{3}{8}$
Per Foot ..	.10	.14	.18	.20	.23
Int. Diam.	$\frac{1}{2}$	$\frac{5}{8}$	$\frac{3}{4}$	$\frac{7}{8}$	1
Per Foot ..	.28	.33	.38	.44	.50

GAS STOVE TUBING

Int. Diam. $\frac{3}{8}$ inch, per foot.20

SODA HOSE

$\frac{3}{8}$ inch., 5-ply, per foot.32

EXHIBIT "C 50."

THE EUREKA RUBBER MANUFACTURING CO.

SUCTION HOSE

We manufacture following Brands:

"Acme"

"Buffalo"

"Capitol"

"Durable"

STANDARD LIST, SMOOTH BORE

Made on Spiral, Round or Flat Steel Wire.

Int. Diam.	Per Foot	Int. Diam.	Per Foot
2 inch.....	\$2 60	6 inch.....	\$10 50
2½ ".....	3 50	6½ ".....	12 00
3 ".....	4 50	7 ".....	13 50
3½ ".....	5 50	7½ ".....	15 00
4 ".....	6 50	8 ".....	16 50
4½ ".....	7 50	9 ".....	19 50
5 ".....	8 50	10 ".....	22 50
5½ ".....	9 50	12 ".....	27 50

ROUGH BORE

Made on Spiral, Round or Flat Galvanized Iron Wire.

Int. Diam.	Per Foot	Int. Diam.	Per Foot
2½ inch.....	\$3 10	6½ inch.....	\$10 50
3 ".....	4 00	7 ".....	12 00
3½ ".....	4 90	7½ ".....	13 50
4 ".....	5 80	8 ".....	15 00
4½ ".....	6 70	9 ".....	17 50
5 ".....	7 60	10 ".....	20 00
5½ ".....	8 50	12 ".....	25 00
6 ".....	9 50		

When ordering Suction Hose, specify if wanted with ends enlarged for iron pipe nipples.

THE EUREKA RUBBER MANUFACTURING CO.

SUCTION HOSE

REGULAR WIRED ON SPIRAL BRASS WIRE

Int. Diam.	Per Foot	Int. Diam.	Per Foot
¾ inch.....	\$0 77	1½ inch.....	\$1 65
1 ".....	1 00	1¾ ".....	2 10
1¼ ".....	1 25	2 ".....	2 50

REGULAR WIRED ON TINNED IRON WIRE

Int. Diam.	Per Foot	Int. Diam.	Per Foot
¾ inch.....	\$0 70	1½ inch.....	\$1 50
1 ".....	90	1¾ ".....	1 90
1¼ ".....	1 15	2 ".....	2 30

"AGRICULTURAL" WIRED, FOR THRESHER
TANK PUMPS, ETC.

The spiral spring wire is wound between the tube and the cover, thus forming a part of the hose itself.

Int. Diam.	Per Foot	Int. Diam.	Per Foot
¾ inch, four ply..	\$0 65	1½ " " " ..	1 13
1 " " " ..	75	1¾ " " " ..	1 31
1¼ " " " ..	93	2 " " " ..	1 50

Made in lengths of 10, 15, 20, 25 and 50 feet with end enlarged to fit couplings or nipples.

HARD RUBBER SUCTION HOSE

For Threshers, Steam Well Drilling Outfits and General Portable Engine Work.

It is durable, serviceable, and will not collapse.

Int. Diam.	Per Foot	Int. Diam.	Per Foot
¾ inch, four ply..	\$0 65	1¼ inch, four ply..	\$0 93
1 " " " ..	75	1½ " " " ..	1 13

EXHIBIT "C 50."

THE EUREKA RUBBER MANUFACTURING CO.

Cotton Rubber Lined Garden Hose

We manufacture three grades:

"Admiral"

The heaviest, strongest and best cotton garden hose manufactured. Seamless tube. Has two purple colored lines running longitudinally through the weave.

"Commodore"

Our next grade to "Admiral," strictly high grade. Seamless tube. Has one green and one orange line running lengthwise of the hose.

"Ensign"

An excellent quality at a low price. Fully warranted. Strong and serviceable

All our ½-inch and ¾-inch cotton hose is coupled at factory. We use nickel-plated couplings fastened with wide heavy corrugated bands shrunk on. Brand stenciled on each 50-foot section, and hose tied with red, white and blue bands with words "The Eureka Rubber Manufacturing Co." on white center of band.

THE EUREKA RUBBER MANUFACTURING CO.

Cotton Rubber Lined Mill Hose

We manufacture three grades:

"Admiral"

(Our Best)

A heavy single jacket hose, lined with fine para tube, and having perfectly smooth waterway; suitable for severe work, and equal to service in fire departments of smaller cities and towns where a double jacket hose would be too heavy and expensive.

Guaranteed 400 pounds pressure test.

"Commodore"

(Next to "Admiral")

A heavy mill hose as usually known to the trade. High-grade lining, smooth waterway, and suitable for use in village fire departments and around mills and factories where good service is required under continued and severe wear.

Guaranteed 350 pounds pressure test.

"Ensign"

(Mill Hose)

A regulation weight mill hose well made, closely woven jacket, good tube and fairly smooth waterway. Specially adapted for protection around mills, factories, warehouses and other places where hose while having to stand high pressure cannot be used if heavy and difficult to handle, and where lightness and strength are most required.

Guaranteed 250 pounds pressure test.

Standard Price List Cotton Mill Hose

Per Foot		Per Foot	
1 inch.....	\$0 35	2 inch.....	\$0 60
1¼ "	45	2¼ "	65
1½ "	50	2½ "	70

EXHIBIT "C 50."

THE EUREKA RUBBER MANUFACTURING CO.

SHEET PACKINGS

In the regular Sheet Rubber Packings
we make

Cloth Insertion		Cloth One Side
C. I.		C. O. S.
	Cloth Both Sides	
	C. B. S.	

Thickness	1-Ply	2-Ply	3-Ply	4-Ply
$\frac{1}{8}$ inch, per lb..	\$0 65	.....	.....	.....
$\frac{1}{16}$ " " " ..	60	\$0 63	\$0 66	.....
$\frac{3}{32}$ " " " ..	55	58	61	.....
$\frac{1}{8}$ " " " ..	.....	55	58	\$0 61
$\frac{3}{16}$ " " " ..	.....	.....	55	58
$\frac{1}{4}$ " " " ..	.....	.....	.....	55

There is one ply of cloth to every $\frac{1}{16}$ inch thickness.

Three cents per pound additional will be charged for each extra ply of cloth. Each cloth, whether insertion or on the outside, to count as one ply.

We press cure all of our Sheet Rubber Packings, except our cheapest grade.

We also manufacture Wire Insertion Sheet Rubber Packing, made same as the Cloth Insertion, but using fine wire netting instead of cloth.

We make a very fine quality of Plumbago or Self-Vulcanizing Sheet Packing, both plain and with wire insertion. This packing is best adapted to permanent joints or where joints are not often broken, as it vulcanizes hard and never leaks.

THE EUREKA RUBBER MANUFACTURING CO.

RED SHEET PACKING

We manufacture a special Red Sheet Packing, the result of many years experience. It is particularly adapted for use where ammonia, oil, gas or acids are used. It will satisfactorily do any work for which any kind of sheet rubber packing is used, and we recommend it for use when all other brands have failed.

"Buffalo Brand"

Put up in rolls $\frac{1}{8}$ ", $\frac{1}{16}$ ", $\frac{3}{32}$ ", $\frac{1}{8}$ ", $\frac{3}{16}$ " and $\frac{1}{4}$ " thick.
Special weights made to order.

Three parallel lines, Red, White and Blue
run lengthwise of the roll
and every three feet

A "BUFFALO" HEAD

is stamped on the surface of the packing.

This makes it easily distinguished
and buyers will be able to detect any attempt
at substitution.

The brand and colored lines
are copyrighted.

List Price, \$1.00 Per Lb.

We manufacture also square and round duck packing, round duck packing with rubber core and square and round pure gum packings.

EXHIBIT "C 50."

THE EUREKA RUBBER MANUFACTURING CO.

Rubber Carriage Drills and Ducks

We are large manufacturers of this line. Long and successful experience will enable us to produce goods which in quality and finish cannot fail to be the highest grade.

Our Brands:

"Acme"

(Best on the Market, Special Close Woven Fabric, High Grade Cover, New Grains)

"Buffalo"

(Next to "Acme" in General Quality and Finish)

Standard Price List Rubber Carriage Drills and Ducks

Ounce	36-inch Drill	46 to 50-in. Drill	54-in. Drill and 50-in. Duck	54-inch Duck
14.....	\$0 64	.....	.....	.....
15.....	66	.....	.....	.....
16.....	69	.....	.....	.....
17.....	71	.....	.....	.....
18.....	74	\$0 75	.....	.....
19.....	76	.....	.....	.....
20.....	79	80	.....	.....
22.....	84	85	.....	.....
24.....	89	90	\$1 00	\$1 10
26.....	94	95	1 05	1 15
28.....	99	1 00	1 10	1 20
30.....	.....	1 05	1 15	1 25
32.....	.....	1 10	1 20	1 30
34.....	.....	1 15	1 25	1 35
36.....	.....	1 20	1 30	1 40
38.....	.....	1 25	1 35	1 45
40.....	.....	1 30	1 40	1 50
42.....	.....	1 35	1 45	1 55

Blue or Green Back, net additional. 8 cts. per yd.

Brown Back, net additional..... 5 " " "

Flocked Back, green, blue or brown, net additional..... 18 " " "

THE EUREKA RUBBER MANUFACTURING CO.

PRICE LIST

Adopted by All the Manufacturers of Enameled Oil-Cloth

Width	MUSLIN	Per Yard
4-4	Black Enamel Muslin.....	17½ c.
5-4	Black Enamel Muslin.....	19
6-4	Black Enamel Muslin.....	24½
	Colored Back, additional.....	01
	Figured or Printed Back, net additional.....	00½
5-4	Green, Brown and Maroon Face Muslin.....	24½
6-4	Green, Brown and Maroon Face Muslin.....	31½
5-4	Yellow, Drab, Blue and Russet Face Muslin.....	31½
5-4	Shoe and Bag Muslin.....	21
5-4	White Glazed Sign Muslin.....	24
5-4	White Pebbled Grain or Dull Finish Sign Muslin.....	21
5-4	Single English-Lined Muslin.....	24½
5-4	Double English-Lined Muslin.....	30½
5-4	Glazed Hat Muslin, all colors.....	30½
4-4	Double Slate Muslin.....	39½
5-4	Double Slate Muslin.....	45
5-4	Head Lining Muslin—Blue, Green or Brown.....	85½
5-4	Flock-Back Muslin—Blue, Green or Brown.....	39½
	DRILL	
4-4	Black Enamel Drill.....	23
5-4	Black Enamel Drill.....	24
50-in.	Black Enamel Drill.....	26
6-4	Black Enamel Drill.....	31
	Colored Back, additional.....	07
	Figured or Printed Back, net, additional.....	00½
	Green and Brown Face, additional.....	10
	Yellow, White, Drab and Blue Face, additional.....	16
4-4	Single Slate Drill.....	29
50-in.	Single Slate Drill.....	34½
4-4	Double Slate Drill.....	61
50-in.	Double Slate Drill.....	66
5-4	Tan-Back (Glaze-Finish) Drill.....	33
48-in.	Tan-Back (Glaze-Finish) Drill.....	35
48-in.	Flock-Back Drill.....	48
	DUCK	
4-4	Black Enamel Duck.....	28
5-4	Black Enamel Duck.....	30
50-in.	Black Enamel Duck.....	32
6-4	Black Enamel Duck.....	36
60-in.	Black Enamel Duck.....	51
	Colored Back, additional.....	07
	Oil Back, additional.....	14
	Green and Brown Face, additional.....	10
	Yellow, White, Drab, Blue and Oil Face, additional.....	16
44-in.	Coating Duck, No. 6, 8 or 10.....	30
50-in.	Flock-Back Duck—Blue, Green or Brown.....	59
50-in.	Leather Cloth.....	65
6-4	Leather Cloth.....	71
60-in.	Leather Cloth.....	76
	MOLESKIN	
4-4	English Moleskin.....	65
5-4	English Moleskin.....	75

PEBBLE, LONG OR LEATHER GRAIN, GLAZED OR IMITATION RUBBER FINISH.

EXHIBIT "C 50."

THE EUREKA RUBBER MANUFACTURING CO.

BESIDES THE GOODS MENTIONED IN CATALOGUE
WE MANUFACTURE

Rubber Mats and Matting

Rubber Fruit Jar Rings of Every Description

Rubber Gaskets of All Kinds

Rubber Prop Block

Rubber Springs of All Kinds

Rubber Diaphragms

Rubber Valve Balls

Rubber Valves and Rings

Chemical Hose, Gas Hose

Marine Hose, Tanners' Hose

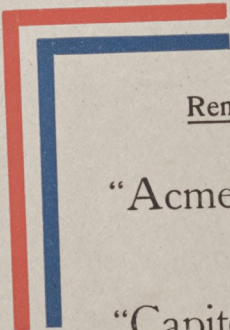
Rubber Horse Shoe Pads

All Kinds of

Moulded Goods

WRITE FOR PRICES OR OTHER INFORMATION

EXHIBIT "C 50."



Remember Our Brands

"Acme"

"Buffalo"

"Capitol"

"Durable"

~~EQUALITY~~
"Economy"

"Favorite"

"Guarantee"

For Rubber Hose and Belting

"Admiral"

"Commodore"

"Ensign"

For Cotton, Garden and Mill Hose

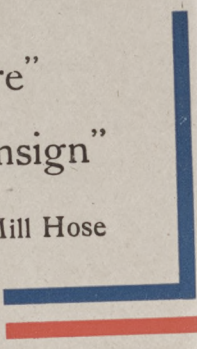
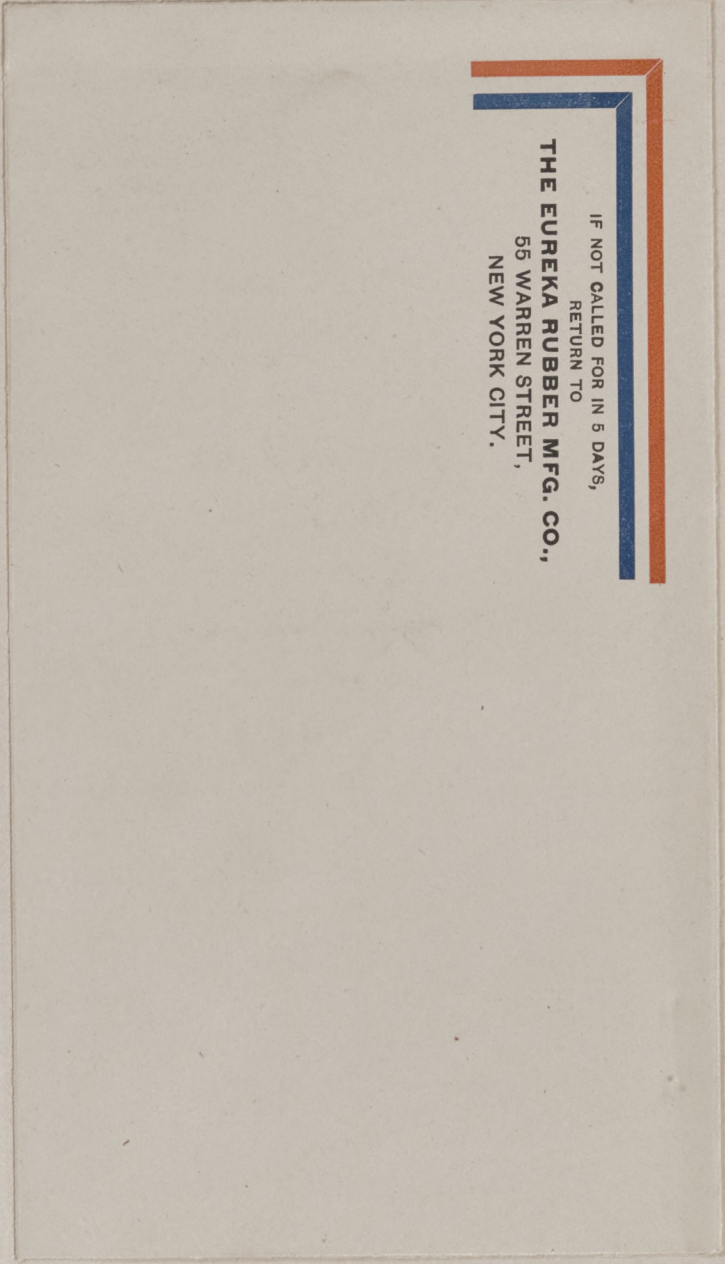


EXHIBIT "C 51."



IF NOT CALLED FOR IN 5 DAYS,
RETURN TO
THE EUREKA RUBBER MFG. CO.,
55 WARREN STREET,
NEW YORK CITY.

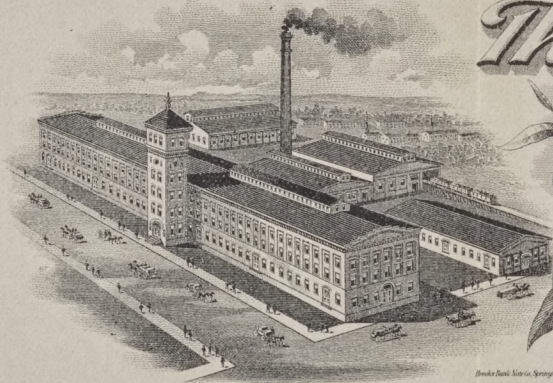
EXHIBIT C —.

[Faint, illegible text and markings, possibly bleed-through from the reverse side of the page.]

GEO. R. COOK, President.

WM. S. HANCOCK, Vice President.

J. A. LAMBERT, Secy. & Genl. Mgr.



FACTORY & GENERAL OFFICES,
TRENTON, N. J.

Brooks-Band, Inc. Co., Springfield, Mass.

The Eureka

CABLE ADDRESS,
REKARUB.

RUBBER MANUFACTURING CO.

OF TRENTON, N. J.

**MANUFACTURERS
MECHANICAL RUBBER GOODS,
AND RUBBER CARRIAGE DUCKS AND DRILLS.**



CHICAGO STORE, 248 RANDOLPH ST.
NEW YORK STORE, 55 WARREN ST.
BOSTON STORE, 276 DEVONSHIRE ST.

New York, _____

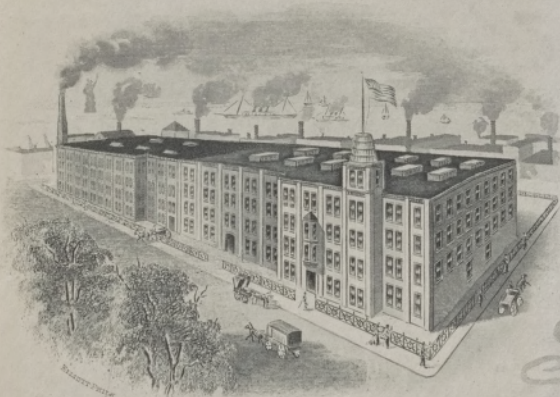
NEW

M. L. REED.
PRESIDENT.

B. L. STOWE.
VICE PRESIDENT.

GEORGE A. WIES.
TREASURER.

ISAAC B. MARKEY.
SECRETARY.



CABLE ADDRESS, "EAGLE HOSE," NEW YORK.

NEW YORK OFFICE, 13 BARCLAY STREET.



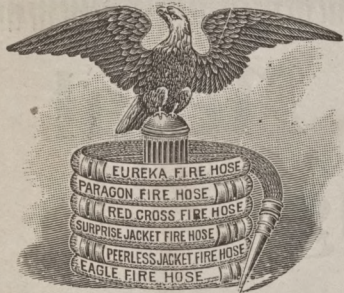
Factory: Wilkinson and Arlington Avenues,

JERSEY CITY, N. J.

EXHIBIT C 57.

Kubert © 52

Complainant's advertisement in *Indian Rubber World* for Dec. 1, 1903, at page 14



GOLD MEDAL AWARDED
at
PAN-AMERICAN EXPOSITION,
1901.

EUREKA FIRE HOSE CO.,

13 BARCLAY ST., NEW YORK.
MANUFACTURERS OF THE CELEBRATED BRANDS

“RED CROSS” (One Ply) “PARAGON” (Two Ply) “EUREKA” (Three Ply)
“U. S.” Brand Rubber Lined Cotton Fire Hose

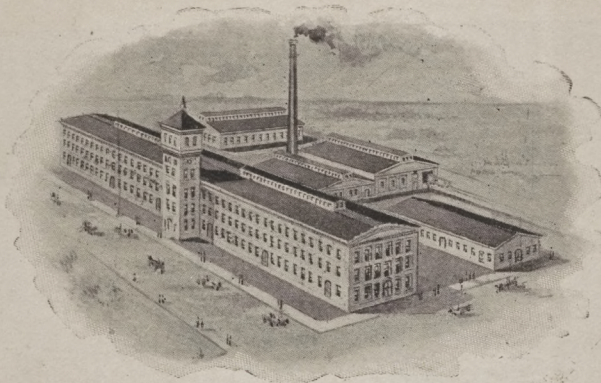
Adopted as the Standard Factory Fire Hose by the Associated Factory Mutual Fire Insurance Companies, for Factory and Mill Fire Protection.

COTTON and LINEN HOSE of all grades, both plain and rubber-lined. All sizes.

These Goods are especially adapted for use in Woolen, Cotton, Silk, Print, Knit Goods and Carpet Mills, Dyeing and Bleaching establishments, Pulp and Paper Mills, Breweries and Distilleries, Sugar Refineries, Ice and Refrigerating Machinery, Chemical Works, Tanneries, etc. Samples and full information given on application.

Defendant's advertisement on page XIII
of same issue.

THE EUREKA RUBBER MFG. CO. OF TRENTON, NEW JERSEY.



Manufacturers of

Rubber Carriage Drill and Duck, Cotton Rubber Lined Hose, and Mechanical Rubber Goods of Every Description.

Factory strictly modern in design, with machinery of the latest and most approved description throughout, using only first class raw material, and producing nothing but reliable grades.

We solicit inquiries from the trade direct, or through our Branch Stores or Salesmen. We promise prompt attention to same.

11

