

IN THE MATTER of the Petition of

JOSIAH WEDGWOOD & SONS, LIMITED,

AND

1909
Nov 13.

IN THE MATTER OF THE REGISTRATION OF THE TRADE-MARK "WEDGWOOD" AS APPLIED TO THE SALE OF CHINAWARE, EARTHENWARE, STONEWARE, JASPER, PORCELAIN, TILES, POTTERY, AND OTHER LIKE ARTICLES, IN PURSUANCE OF THE PROVISIONS OF THE TRADE-MARK AND DESIGNS ACT.

Trade-Mark—Specific mark—Name of individual—Application to register by company—Long user as applied to goods—Secondary meaning—Right to register in Canada.

Upon an application therefor by a limited company or corporation, the court ordered the name of an individual to be registered as a specific trade-mark, it being established that there had been such long user, in all the principal countries of the world, of the name as applied to the manufacture of certain goods as to give it a distinctive or secondary meaning.

In re *Elkington's Trade-Mark* (11 Ex. C. R. 293) referred to.

PETITION of Josiah Wedgwood & Sons, Limited, for an order to register a trade-mark.

The petition sets out the following facts :—

" 1. That your petitioner for many years sold throughout the various Provinces of the Dominion of Canada, and throughout the world generally, chinaware, earthenware, stoneware, jasper, porcelain, tiles, pottery, and other like articles stamped with the trade-mark "WEDGWOOD," which has for many years been registered in England and other countries as a trade-mark designating goods manufactured by your petitioner and its predecessors in title to the business presently carried on by your petitioner.

2. That your petitioner is desirous of obtaining an order for the registration of the word "WEDGWOOD" as a general trade-mark in Canada.

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3. That your petitioner made application for the registration of the said name "WEDGWOOD" as a general Trade-Mark in the Department of Agriculture, Trade-Mark and Copyright Branch, at Ottawa, Canada, as applied to the manufacture and sale of the said above enumerated articles.

4. That the registration of the said general Trade-Mark "WEDGWOOD" was refused in the form as presented, the Department holding that the name of an individual should be presented in some distinctive form for registration."

The allegations of the petition were substantiated by affidavits showing long user of the trade-mark in all the principal countries of the world.

November, 13th, 1909.

R. G. Code, K.C., appeared in support of the petition.
Nem. con.

CASSELS, J.—[After hearing the material read in support of the application]:—I am disposed to grant the petition, with one qualification which appears to me to be due to a mistake. You ask for a general trade-mark. I think that under the authority of the *Elkington* case (1), and in view of the long user for a great period of years of the name "Wedgwood" as applied to the manufacture of pottery, etc., that it has acquired a distinctive or secondary meaning, as is discussed in the "Stone Ale" case (*Thompson v. Montgomery* (2)). I am not quite sure that it is right to treat it as a mere name; the petitioners are a limited company or corporation and not an individual seeking a trade-mark for his own name. I think, therefore, that I ought to grant the petition.

Order accordingly.

(1) REPORTER'S NOTE.—See *In re Elkington & Co's Trade-Mark* 11 Ex. C. R. 293.

(2) 41 Ch. D. 35.