

In the High Court of Justice.

*Chancery Division.*

Mr. JUSTICE NORTH.

Folios 22.

Writ issued 21st January, 1895.

BETWEEN JOHN BRINSMEAD AND SONS . . . *Plaintiffs*

AND

THOMAS EDWARD BRINSMEAD,  
EDWARD GEORGE STANLEY  
BRINSMEAD, SIDNEY WALTER  
BRINSMEAD, AND ALBERT JOSEPH  
WILCOX . . . . . *Defendants.*

Statement of Claim.

1. The Plaintiffs are a firm of pianoforte manufacturers carrying on business in Grafton Road Kentish Town and Wigmore Street in the County of London.

2. The partners constituting the Plaintiffs' firm are and for many years have been John Brinsmead and his two sons Thomas James Brinsmead and Edgar William Brinsmead. The said business was first established by the said John Brinsmead in the year 1837 and was carried on under the name of "John Brinsmead" until the year 1867 in which year the title or style of "John Brinsmead and Sons" was adopted by the Plaintiffs and has ever since been used by them and such title was registered as the trade mark of the Plaintiffs in the year 1877.

3. The Plaintiffs are also known and addressed by many of their customers and the public as "J. Brinsmead & Sons."

4. The business of the Plaintiffs is a very extensive one employing a large number of skilled workmen and by means of the expenditure of large sums of money in advertising and otherwise and by many years of labour the Plaintiffs have acquired and now enjoy a world-wide reputation as manufacturers of pianofortes of the highest class and such pianofortes are supplied by them in large numbers to all parts of the world. The pianofortes manufactured by the Plaintiffs have attained a great reputation by reason of the excellence of their

manufacture and are generally known and referred to as "Brinsmead" pianos not only in the pianoforte trade but also by the general public.

5. For considerable periods prior to the month of October 1894 the Defendants were all of them employed as workmen or assistants in the Plaintiffs' said business and by that means obtained a knowledge of the Plaintiffs' methods of manufacture and of their business generally and also of the names of many of the Plaintiffs' customers.

6. In the month of October 1894 the Defendants commenced to carry on and have since carried on upon their own account the business of pianoforte manufacturers in partnership under the style or firm of "T. Brinsmead & Sons."

7. The Defendants' said business is carried on at a small workshop taken by the Defendant Thomas Edward Brinsmead for the purpose within a few minutes' walk of the Plaintiffs' factory in Kentish Town. The Defendants' said business is at present carried on upon a small scale the total capital employed by them therein being the sum of £160 which has been contributed in equal shares by the Defendants Thomas Edward Brinsmead and Albert Joseph Willcox who are the senior partners in the firm.

8. In the months of October and November 1894 the Defendants issued to numerous pianoforte dealers (many of whom are customers of the Plaintiffs) pawnbrokers furniture dealers and other persons in various parts of the United Kingdom a circular in the following terms—

" T. Brinsmead & Sons,  
 " Pianoforte Manufacturers,  
 " Bartholomew Rd. Works,  
 " Kentish Town, London.

" Gentlemen,

" We invite the honour of a visit to inspect our unique high  
 " class Pianos at the above works. For artistic design, tone,  
 " touch, skilled workmanship and finish they are absolutely  
 " unequalled.

" Pending your call or orders,

" We remain, gentlemen,

" Your obedient servants,

" T. BRINSMEAD & SONS.

" T. Brinsmead & Sons supply the trade only.

" Photos and prices on application."

9. In answer to numerous persons who applied to them for " photos and prices " the Defendants issued a number of photographs of a piano and price lists.

10. The said photographs showed a piano with the words "T. Brinsmead & Sons" printed in white letters on lower front panel

thereof in the same position and in the same type as are adopted by the Plaintiffs in illustrated price lists and catalogues of their pianos published by them.

11. In the said price lists issued by the Defendants as aforesaid are described nine styles of pianofortes purported to be sold by them and in the detailed descriptions of several of such pianos the following words were used "Check Action" "Patent Check Action" "Patent Perfect Repeater Action" and "Patent Perfect Check Repeater Action."

12. In the year 1878 the Plaintiffs (being entitled to a patent for a form of check action employed in pianos) registered as their trade mark in connection with pianos the words "Patent Perfect Check Repeater" such words having been used by the Plaintiffs for some years prior to the year 1875. The words registered by the Plaintiffs as aforesaid have ever since such registration been used by the Plaintiffs in their lists and advertisements as describing a particular feature of their pianos and such words are well known as applying to the Plaintiffs' instruments and are not used by any other manufacturers except by the Defendants as above-mentioned.

13. At the date of the issue of the said circulars photos and price lists the Defendants had not in fact completed more than one or two pianos and such instruments were not high class instruments or unequalled in artistic design tone touch workmanship or finish but were instruments of an inferior class.

14. Since commencing business as aforesaid the Defendants have sold certain pianos manufactured by them bearing thereon sunk or embossed in an iron plate forming part of the instrument the words "T. Brinsmead & Sons London" and also bearing the same name on other portions of the instruments.

15. The instruments so sold by the Defendants as aforesaid are likely to be mistaken by persons unacquainted with the quality of the Plaintiffs' pianofortes for instruments of the Plaintiffs' manufacture and to be called or sold as "Brinsmead" pianofortes and being inferior in quality to the instruments manufactured by the Plaintiffs and if the Defendants are permitted to sell further instruments bearing such name or mark as aforesaid or any similar name or mark the reputation and business of the Plaintiffs is in danger of being seriously prejudiced.

16. The Plaintiffs submit that the name or title "T. Brinsmead & Sons" does not fairly or truthfully describe the Defendants' firm and the Plaintiffs charge that the use of such name by the Defendants the issue of the circulars photographs and price lists aforesaid and the other conduct of the Defendants above referred to were designed and intended to lead the public to believe that the business carried on by the Defendants is the Plaintiffs' business and

thereby to obtain for the Defendants a portion of the Plaintiffs' business and the benefit of the reputation which the Plaintiffs have obtained.

17. The conduct of the Defendants herein complained of is calculated to produce the consequences mentioned in the preceding paragraph.

18. Many persons have in fact been deceived by the circular aforesaid into believing that the same was published by the Plaintiffs' firm.

The Plaintiffs' claim is for—

- (1) An injunction to restrain the Defendants from carrying on the business of pianoforte manufacturers under the name of "T. Brinsmead & Sons" or under any other name so closely resembling the Plaintiffs' name as to be calculated to mislead the public into the belief that the business carried on by the Defendants is the Plaintiffs' business.
- (2) An injunction to restrain the Defendants from issuing or publishing any circular advertisement or other document containing any representation or any statement leading or calculated to lead to the belief that pianos manufactured or sold by the Defendants are of the Plaintiffs' manufacture.
- (3) An injunction to restrain the Defendants from selling or disposing of any pianos having marked or impressed thereon the name of "T. Brinsmead & Sons" or any other name or combination of names of which the word "Brinsmead" forms a part without clearly distinguishing such pianos from the pianos manufactured by the Plaintiffs and from otherwise selling and passing off or doing any act calculated to enable other persons to pass off pianos manufactured or sold by the Defendants as pianos of the Plaintiffs' manufacture.

C. LYTTTELTON CHUBB.

Delivered this 26th day of March, 1895, by WALTER MASKELL, of 35, John Street, Bedford Row, in the County of London, Solicitor for the Plaintiffs.

# In the High Court of Justice.

CHANCERY DIVISION.

Mr. JUSTICE NORTH.

Fos. 15.

BETWEEN—JOHN BRINSMEAD & SONS ... .. PLAINTIFFS

AND

THOMAS EDWARD BRINSMEAD, EDWARD  
GEORGE STANLEY BRINSMEAD, SIDNEY  
WALTER BRINSMEAD and ALBERT JOSEPH  
WILCOX ... .. DEFENDANTS.

## Statement of Defence.

Delivered the 4th day of April 1895 by LEWIS & LEWIS of Ely Place Holborn in the County of Middlesex Solicitors for the Defendants.

1.—Paragraphs 1 and 2 of the Statement of Claim (hereinafter called the Claim) are admitted. A large and important branch of the Plaintiffs' business if not the greater portion thereof consists of the sales of pianofortes by retail.

2.—The Defendants do not admit the allegations in paragraph 3 of the Claim.

3.—The Defendants do not admit that the pianofortes manufactured by the Plaintiffs are generally or at all known or referred to as Brinsmead pianos or that by the means alleged in paragraph 5 of the Claim or any other means they have obtained or have any special knowledge of the names of any of the Plaintiffs' customers. In or about October 1894 the Defendants were as they allege without just cause dismissed from the Plaintiffs' employment and thereupon the Defendants who were dependent on their weekly earnings for their livelihood and were ignorant of any trade other than that of pianoforte manufacturers were compelled to set up the manufacture of pianofortes. In fact the greater part of the trade in manufacturing pianofortes carried on in London is carried on in the neighbourhood of Kentish Town and in choosing the premises referred to in paragraph 7 of the Claim the Defendants acted bona fide and without any intention of appropriating any benefit connected with the reputation of the Plaintiffs or the locality of the Plaintiffs' works.

4.—With reference to the partnership referred to in paragraph 6

of the Claim the Defendant Willcocks since his dismissal from the Plaintiffs' firm has desired to be at liberty to carry on his trade in other parts of the world and for this reason the partnership between him and the other Defendants is determinable by six months' notice on either side. The Defendants adopted the partnership style of T. Brinsmead & Sons bonâ fide and solely for the purpose of making known the fact that the two sons of the Defendant Thomas Edward Brinsmead were his partners and without any intention of passing off the Defendants' goods or business as the goods or business of the Plaintiffs. Save and subject as aforesaid the Defendants admit paragraphs 4, 5, 6 and 7 of the Claim.

5.—The Defendants admit that the circular set forth in paragraph 8 of the Claim was issued to pianoforte dealers as alleged in the said paragraph but they deny that the same was issued to any customers of the Plaintiffs or to any pawnbrokers furniture dealers or persons other than pianoforte dealers. The Defendants say that the notice at the foot of such circular that the Defendants supply the trade only is sufficient of itself to distinguish the Defendants' business and manufacture from that of the Plaintiffs'.

6.—The Defendants admit that they have issued photographs of a pianoforte and price lists of the pianoforte manufactured by them and that the said photographs showed a pianoforte with the words T. Brinsmead & Sons distinctly printed on the panel thereof but they deny that the said words or letters were printed in the same position or in the same type as are adopted by the Plaintiffs in any price list or catalogue published by them and the Defendants say that the Defendants' said photograph and price lists were in printing and other respects entirely distinguishable from the Plaintiffs' price lists or catalogues and contained nothing whatever calculated to lead any person to believe that the Defendants' goods were manufactured or sold by the Plaintiffs.

7.—It is not the fact that the Plaintiffs are entitled by virtue of any patent or registered trade mark or otherwise to any right in or exclusive user of the words " patent perfect check repeater " or any like words. In fact the words check repeater or perfect check repeater action or similar words are commonly used in the trade as descriptive of special forms of pianoforte action and the Defendants are in fact now entitled to use a particular form of check repeater action known as the perfect repeater check action. Save and subject as aforesaid the Defendants deny each and all of the allegations respectively contained in paragraphs 9 to 12 both inclusive of the Claim.

8.—Under the circumstances hereinbefore appearing the Defendants have manufactured only a limited number of pianofortes for sale but all such pianofortes are of good quality and character having regard to the prices charged for the same.

9.—The Defendants say that in using the trade name of T. Brinsmead & Sons they have acted within their rights and without infringing any right or property of the Plaintiffs.

10.—The Defendants in the course of their manufacture have never attempted in any way to pass off any pianofortes manufactured or sold by them as the goods of the Plaintiffs or as pianofortes manufactured or sold by the Plaintiffs. The Defendants submit that the Plaintiffs have not as against the Defendants any exclusive right or property in or user of the word Brinsmead or the words Brinsmead & Sons in connection with pianofortes.

11.—The Defendants have never attempted and do not intend or threaten to represent their goods or pianos as the goods or pianos of the Plaintiffs nor have the Defendants in any way imitated the style or get up of the Plaintiffs' goods or pianos and the goods and pianos of the Defendants are not in fact likely to be taken by purchasers or others for or as the goods or pianos of the Plaintiffs. Save and subject as aforesaid the Defendants deny each and all of the allegations respectively contained in paragraphs 13 to 18 both inclusive of the Claim.

ALDRED W. ROWDEN.

In the High Court of Justice.

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CHANCERY DIVISION.

MR. JUSTICE NORTH.

Fos. 15.

Delivered the 4th day of April, 1895.

JNO. BRINSMEAD & SONS

—v.—

BRINSMEAD and Others.

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Statement of Defence.

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LEWIS & LEWIS,  
10 & 11, Ely Place,  
Holborn.



# Reply.

The Plaintiffs join issue with the Defendants on their Defence except so far as the same consists of admissions.

C. Lyttelton Chubb.

Delivered this 22<sup>nd</sup> day of April 1895 by W<sup>alter</sup> Maskell of 35 John Street, Bedford Row in the County of London, Solicitor for the Plaintiffs.

1895. B. N. 329

In the High Court of Justice  
Chancery Division  
M<sup>r</sup> Justice North

Between John Brinsmead Sons  
Plaintiff

\_\_\_\_\_ and \_\_\_\_\_

Thomas Edward Brinsmead  
Edward George Stanley  
Brinsmead Sidney Walter  
Brinsmead and Albert  
Joseph Willcox -  
Defendants

Take Notice of trial of this Action before  
M<sup>r</sup> Justice North in chambers for the 10<sup>th</sup>  
day of June 1895.

Dated the 30<sup>th</sup> day of May 1895.

Walter Fraskell  
35 John Street  
Bedford Row  
Plaintiff Solicitor.

To Mess<sup>rs</sup> Lewis & Lewis  
The Defendants ~~their~~ }  
Solicitors or Agents.

In the High Court of Justice  
Chancery Division  
Mr Justice North

With Witnesses

Brimsmead  
John Adams

Brimsmead  
+ others

Copy

Pleadings



The within are the whole of  
the pleadings delivered in this  
action

Walter Maskell  
2 Dec 1895

Jr 21 Nov 1895

November 20 1895  
Part heard NW for  
Roma J. G.L. 57.  
June 24/66  
11/95  
Rey

Walter Maskell  
35 John Street  
Bedford Row  
Plaintiff's Solicitor