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Trade Regulation

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to help prevent a head-on collision between the oncoming plaintiff's car and a dump-truck which was passing the dairy truck.[20] In another case, a plaintiff complained that a swinging toilet room door fell upon her. The door was located in defendant's theatre. The doctrine of res ipsa loquitur was held inapplicable, on the theory that the door was not within the exclusive control of the defendant.[21]

Finally, the keys-in-the-ignition situation arose again in Cleveland. The first reported case was surveyed last year.[22] In that case a thief stole a car and negligently caused damage. The owner was, on his demurrer, held possibly negligent for violating a Cleveland ordinance forbidding leaving a car parked with the keys in the ignition. In *Wagner v. Arthur*[23] in a similar situation, but with a different judge, the demurrer was upheld. The difference was this: While the plaintiff was struck in Cleveland as before, the car had been stolen in Columbus where there is no such ordinance.

WALTER PROBERT

TRADE REGULATION

Trade-Name Usage

Trade-names differ somewhat from trade-marks, and the exclusive right to use a trade-name imposes a more burdensome restriction upon competitors than the right to use a trade-mark.[1] Normally, the law of unfair competition does not protect a name which is descriptive of a vehicle or article unless there has developed a secondary meaning.[2] Thus the word "yellow" in combination with other words such as "Yellow Taxicab Company" may acquire a secondary meaning and be entitled to protection.[3] The acquisition of a secondary meaning is a question of fact, regardless of the length of user.[4] Thus the controlling fact is that such a meaning has been acquired in the mind of the public.

A controversy which involved the foregoing general principles applicable to trade-names arose in Springfield, Ohio.[5] The plaintiff, Circle Cab Company, was incorporated in 1946 and had operated a cab business in that city continually thereafter. Defendant, Springfield Yellow Cab

[20] Roush v. Hillman, 134 N.E.2d 170 (Ohio App. 1954).

[21] Warner v. Interstate Theatres, Inc., 137 N.E.2d 166 (Ohio App. 1952). But compare the holding of another court that the doctrine did apply to a collapsing bar stool. Gow v. Multnomah Hotel, Inc., 191 Ore. 45, 224 P.2d 552 (1950).

[22] See 7 WEST. RES. L. REV. 340 (1956).

[23] 134 N.E.2d 409 (Ohio C.P. 1956).

Company, had been duly licensed by the City of Springfield to operate taxicabs under the name "Yellow Cab."[6] Circle operated 35 cabs in 1951, all bearing the name of Circle Cab Company. During 1952 Circle obtained a valid city license and operated *one* of these cabs under the name of "Yellow Cab." It continued to operate *one* cab so designated throughout 1953 and into 1954 when the lawsuit began. Circle in fact obtained a license to so operate in each of these years but under circumstances which technically disqualified them as being renewals of the 1952 license and invalid as new licenses because no public hearing was held as to either the 1953 or 1954 license issuances. Springfield had received a license to operate under the same trade name. Circle sued Springfield and Springfield sued Circle, both actions being consolidated in the common pleas court, with the result that Circle obtained an injunction against Springfield prohibiting the use of the words "Yellow" or "Yellow Cab" in connection with its taxicabs.

Springfield appealed on both law and fact, and the two cases were heard together in the court of appeals. The judgment of the court of common pleas was reversed and Springfield was granted an injunction against Circle using the word "Yellow Cab" in its taxicab business.

The decision of the court of appeals was based upon the following grounds: (1) technically the 1953 and 1954 licenses issued to Circle were invalid for procedural defects and therefore the use of the words "Yellow Cab" was not rightful under the circumstances; (2) even assuming a proper user for a period of years, the purpose of such user was to keep out competition; (3) the user in connection with one cab only was so limited that no secondary meaning had been acquired which was entitled to protection; (4) Springfield, being duly licensed by the city to operate cabs with the designation "Yellow Cab," was entitled to enjoin the user of such words by Circle.

The novel part of the holding in this case is that Springfield seemed entitled to protection of its trade-name "Yellow Cab" upon a mere show-

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[1] 1 NIMS, THE LAW OF UNFAIR COMPETITION AND TRADE-MARKS § 45 (4th ed. 1947)

[2] 1 NIMS, THE LAW OF UNFAIR COMPETITION AND TRADE-MARKS § 46 (4th ed. 1947)

[3] Yellow Cab Co. v. Cook s Taxicab & Transfer Co., 142 Minn. 120, 171 N. W 269 (1919)

[4] 1 NIMS, THE LAW OF UNFAIR COMPETITION AND TRADE-MARKS § 38a (4th ed. 1947)

[5] Circle Cab Co. v. Springfield Yellow Cab Co., 137 N.E.2d 137 (Ohio App. 1954)

[6] For purposes of brevity and simplicity in the discussion of this decision, the plaintiff will be referred to as "Circle" and the defendant as "Springfield" during the remainder of the article.