

1960

## Trade Regulation

Maurice S. Culp

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>

 Part of the [Law Commons](#)

---

### Recommended Citation

Maurice S. Culp, *Trade Regulation*, 11 *Wes. Rsrv. L. Rev.* 440 (1960)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol11/iss3/28>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

## TRADE REGULATION

In the law of unfair competition, one of the obstacles facing the plaintiff who seeks to enjoin a defendant from using a similar trade name is the public policy which encourages the free use in business of trade names or words from the public domain which are descriptive or generic to a product or a business.<sup>1</sup> *The Survey of Ohio Law — 1957*<sup>2</sup> discussed a decision which involved a competitor's use of a similar corporate name.<sup>3</sup>

Two decisions reported during the period covered by this Survey adjudicated the right of plaintiff, who had used in the name of its business words which were somewhat descriptive of the nature of the business, to enjoin a later established business from using the identical words in the business name of the service establishment it operated within the same city.

Plaintiff<sup>4</sup> was the operator of a beauty shop in the city of Parma, incorporated under the name of *House of Beauty, Incorporated*. Three years after the plaintiff began operating in Parma, the defendant began operating a beauty shop on a different street in that city under the name of *Ridgewood House of Beauty* — a business which had also been incorporated.<sup>5</sup>

The trial court took notice of the fact that the combination of words "House of Beauty," and similar groupings, are descriptive of the beauty business and are frequently employed throughout the greater Cleveland area. The court also declared that a user of such words cannot acquire an exclusive right to them. Words of common use are thus regarded as public property which may be availed of by others in combination with additional descriptive words, unless their use renders it probable that they would mislead persons possessing ordinary powers of perception. The only really effective remedy against a competitor's use of a trade name is the injunction, and the plaintiff has the burden of proof to show facts which will warrant its issuance. The trial court denied an injunction because of a failure of proof. Facts which the plaintiff must establish are either an actual loss of business or the probability of loss in the future, or both.

The court of appeals<sup>6</sup> affirmed the trial court's judgment and decree denying an injunction because it found the court's conclusion neither against the manifest weight of the evidence nor contrary to

---

1. 1 NIMS, UNFAIR COMPETITION AND TRADE MARKS §§ 42, 45, 185 (4th ed. 1947).

2. Culp, *Trade Regulation, Survey of Ohio Law — 1957*, 9 WEST. RES. L. REV. 376 (1958).

3. United Elec. Fixture & Supply Co. v. United Elec. Supply Co., 140 N.E.2d 340 (Ohio C.P. 1956).

4. *House of Beauty, Inc. v. Lukas*, 159 N.E.2d 633 (Ohio C.P. 1959).

5. The trial court's opinion minimizes the importance of the subsequent incorporation of the defendant's business name, and the court of appeals did not consider this issue.

6. *House of Beauty, Inc. v. Mary Kaye*, 162 N.E.2d 340 (Ohio Ct. App. 1959).