SCHOOL OF LAW
CASE WESTERN RESERVE UNIVERSITY

Case Western Reserve Law Review

Volume 14 | Issue 3

1963

Trade Regulation

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In a third case dealing with the protection afforded the pedestrian at a controlled intersection, the reviewing court in *Ruggiero v. Pescosolido*[80] affirmed a judgment for plaintiff where the pedestrian was forced, by a car blocking the intersection, to step outside the crosswalk.

Becka v. Horvath[81] presented the Court of Appeals for Cuyahoga County with a most interesting problem, *i.e.,* the standard of care which defendant-appellant landlord owed his blind brother-in-law who resided with him. In supporting the verdict of the trial court, the court of appeals affirmed the principle that where the handicap of pedestrian is known, the operator of a motor vehicle owes the pedestrian a greater degree of care, although this may amount to no more than ordinary care under the circumstances. Hopefully this rule will be followed in other cases where blind or infirmed individuals are involved, and the handicap is known or should be obvious to drivers.

Burke v. Cremeens,[82] decided in 1961, held that whether a guest passenger was contributorily negligent so as to bar recovery against a driver other than herself, where there is evidence that her driver was intoxicated, is a question for the jury.

JUSTIN C. SMITH

TRADE REGULATION

OHIO FAIR TRADE LAW

The constitutionality of the 1959 Ohio Fair Trade Law has been challenged frequently in the common pleas courts.[1] In *Hudson Distribs., Inc. v. Upjohn Co.*[2] the Cuyahoga County Court of Appeals sustained the applicability of the statute to non-contracting parties. On the other hand, in *Mead Johnson & Co. v. Columbus Vitamin & Cosmetic Distribs., Inc.*[3] the Franklin County Courts of Appeals held the act unconstitutional. Both cases were appealed to the Ohio Supreme Court. The appeal in the *Mead Johnson & Co.* case has been dismissed for want of a substantial constitutional question, and the application for certiorari because of the conflict between the two courts of appeals was unsuccessful.[4]

Unless the supreme court reviews the *Upjohn* case and harmonizes that decision with the practical consequences of its dismissal of the appeal in the *Mead Johnson & Co.* case, the legal position of the non-signer will depend upon the attitude of the court of appeals in the county of his

80. 183 N.E.2d 807 (Ohio Ct. App. 1962).
81. 184 N.E.2d 455 (Ohio Ct. App. 1962).
82. 182 N.E.2d 324 (Ohio Ct. App. 1961).

residence. Hopefully the Ohio Supreme Court will review the *Upjohn* case so that the non-signer's legal position will be uniform throughout the state.

Another case in the Franklin County Court of Common Pleas[5] seemed likely to present this same constitutional issue. The plaintiff, a cosmetics producer, had entered into contracts with certain sellers, which contracts became the statutory basis for an action to enjoin other sellers who had no contractual relations with the plaintiff. A temporary restraining order was issued. The trial court refused to grant a motion to dissolve the order. Passing only upon the discretionary power of the trial court to continue the order, the court of appeals, temporarily at least, avoided a decision on the merits.

TRADE NAMES

A court of appeals decision illustrates the fact that two generic words may be joined together in a name which is unique and distinctive. When such a name has been used continuously for a long time, the user acquires a property right to it and may restrain its use by the owner of a noncompetitive business.[6] While the word "national" or "city" is generic and may not be appropriated, the use of the words in combination for a period of ninety-five years has resulted in the acquisition of a property right in a trade name.

Having decided that a bank had acquired an exclusive right to the trade name "National City," the court then determined that the public associated in various ways the defendant's corporate name with that of the bank. This entitled the bank to an injunction against the defendant's using the words "National City" in its corporate name or in any other way in connection with its business.[7]

MAURICE S. CULP

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1. See Culp, *Survey of Ohio Law — Trade Regulation,* 13 W. RES. L. REV. 528 (1962).

2. 176 N.E.2d 236 (Ohio Ct. App. 1961), *aff'd,* 174 Ohio St. 487 (1963) (on basis of OHIO CONST. art. 14, § 2).

3. See Mead Johnson & Co. v. Columbus Vitamin & Cosmetic Distribs., Inc., 174 Ohio St. 408, 189 N.E.2d 635 (1963).

4. *Ibid.*

5. Shulton, Inc. v. Columbus Vitamin & Cosmetics Distribs., Inc., 113 Ohio App. 550, 179 N.E.2d 525 (1960).

6. National City Bank v. National City Window Cleaning Co., 180 N.E.2d 20 (Ohio Ct. App. 1962), *rev'd & remanded on other grounds,* 174 Ohio St. 510 (1963). The bank had sought to enjoin the window cleaning company from the use of the words "National City" in its corporate name, contending that the use of such words would be likely to mislead or confuse the public. The Cuyahoga County Court of Common Pleas entered judgment for the defendant. On appeal to the court of appeals, the injunction was granted.

7. *Accord,* Henry Furnace Co. v. Kappleman, 91 Ohio App. 451, 108 N.E.2d 839 (1952).