Business and Commercial Law: Trade Names

Alvin B. Rubin
A commercial partnership was conducting the business of selling beverages at retail, for home consumption, and delivering the beverages to the homes of the customers under the business name of "Home Beverage Service." In Home Beverage Service v. Baas it sought to enjoin another firm from using the title "Victory Home Beverage Service." The court found that the plaintiff's trade name was merely descriptive of the service which it rendered. Therefore, under quite settled principles, the name was incapable of exclusive appropriation by the plaintiff or by anyone else.

Failing in its contention that "Home" is a fanciful, arbitrary and non-descriptive word, as applied to its service, plaintiff urged that, even though the word was not capable of exclusive appropriation as a word, "by long use of its trade name the name had acquired what is referred to by the law writers as a secondary meaning." But plaintiff correctly conceded "that where a complainant depends upon the so-called secondary meaning of a trade name or trade-mark claimed by him he must prove fraud and unfair competition on the part of his rival in order to prevent the latter's use of the trade name or trade-mark in contest." The court found neither fraud nor unfair competition, and therefore no cause for holding defendant liable for unfair competition.

In Davis v. Dees, it was held that a sale of a business together with its "good will" did not preclude the vendor from entering into

*Part-time Assistant Professor of Law, Louisiana State University.

1. 210 La. 878, 28 So. (2d) 481 (1946).

2. The court cited Dryice Corporation of America v. Louisiana Dry Ice Corporation, 54 F. (2d) 882 (C. C. A. 5th, 1932); Drive It Yourself Co. v. North, 148 Md. 609, 130 Atl. 57, 43 A. L. R. 206 (1925). See also, for example, Purity Springs Water Co. v. Redwood Ice Delivery, 203 Cal. 286, 263 Pac. 810 (1928), where "Purity" was held descriptive as applied to bottled spring water; Choynski v. Cohen, 39 Cal. 501 (1870), where "Antiquarian" was held descriptive as applied to a bookstore. Compare 60 Stat. 428, Title I, § 2 (d) (1946), 15 U. S. C.A. § 1052 (d) (1946).