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## Business and Commercial Law: Trade Names

Alvin B. Rubin

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## 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*<sup>1</sup> 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,<sup>2</sup> 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."<sup>3</sup> The court found neither fraud nor unfair competition, and therefore no cause for holding defendant liable for unfair competition.

## UNFAIR COMPETITION

*Alvin B. Rubin\**

In *Davis v. Dees*,<sup>1</sup> 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. 873, 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. 423, Title I, § 2 (d) (1946), 15 U. S. C. A. § 1052 (d) (1946).

3. *Barton v. Rex-Oil Co. Inc.*, 2 F. (2d) 402 (C. C. A. 3d, 1924). See also *Wisconsin Electric Co. v. Dumore Co.*, 35 F. (2d) 555 (C. C. A. 6th, 1928), appeal dismissed 282 U. S. 813, 51 S. Ct. 214, 75 L. Ed. 728 (1930); *American Medicinal Spirits Co. v. United Distillers Limited*, 76 F. (2d) 124 (C. C. A. 2d, 1935); *G. & C. Merriam Co. v. Saalfield*, 198 Fed. 369, 377 (C. C. A. 6th, 1912).

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

1. 211 La. 229, 29 So. (2d) 774 (1947).