

# Louisiana Law Review

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Volume 8 | Number 2

*The Work of the Louisiana Supreme Court for the*

*1946-1947 Term*

*January 1948*

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## Business and Commercial Law: Unfair Competition

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### Repository Citation

Alvin B. Rubin, *Business and Commercial Law: Unfair Competition*, 8 La. L. Rev. (1948)

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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

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1. 210 La. 873, 28 So. (2d) 481 (1946).

2. The court cited *Dryce 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).

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

a similar business in another location, at least so long as he did not actively solicit his old customers.<sup>2</sup> This is in accord with an earlier case,<sup>3</sup> and with the rule generally prevailing in other states,<sup>4</sup> although there have been some intimations to the contrary.<sup>5</sup> If competition on the part of the vendor of a business is sought to be avoided, the vendee can protect himself only by an express stipulation.<sup>6</sup>

#### INSURANCE

#### G. Frank Purvis, Jr.\*

The work of the Louisiana Supreme Court with respect to insurance was limited almost entirely to the construction and interpretation of policy clauses.

#### *Life Insurance*

The important question of the proper construction of war clauses was considered by the court. In *Edwards v. Life and Casualty Insurance Company of Tennessee*<sup>1</sup> the insured held two policies containing war clauses. These clauses were very similar and read as follows:

“The insured may serve in the Navy or Army of the United States or in the National Guard in time of peace or for the purpose of maintaining order in the case of riot; in time of actual war, however, a written permit must be obtained from the Company for such service and an extra premium paid. Should the insured die while enrolled in such service in war time without such permit, the Company’s liability will be restricted to the net reserve of this policy.”

“The liability of the company shall be limited to the reserve on this policy, or to one-fifth of the amount, payable hereunder

2. But see *J. Alfred Mouton, Inc. v. Hebert*, 199 So. 172 (La. App. 1940) noted in (1941) 15 Tulane L. Rev. 627, where the buyer was held entitled to rescission of the sale if the seller engaged in competition with him and directly solicited business from his former customers. In the *Davis* case the court stated that since there was no evidence of solicitation, it was unnecessary to decide this issue.

3. *Bergamini v. Bastian*, 35 La. Ann. 60, 48 Am. St. Rep. 216 (1883).

4. See Note (1941) 15 Tulane L. Rev. 627. See also *Vonderbank v. Schmidt*, 44 La. Ann. 264, 10 So. 616 (1892); *Liquidators of Nicholson Publishing Co., Limited v. F. S. Upton Printing Co.*, 152 La. 270, 93 So. 91 (1922).

5. See *Meyer v. Labou*, 51 La. Ann. 1726, 26 So. 463 (1899).

6. For rulings that such a stipulation is not contrary to public policy, see *Wintz v. Vogt*, 3 La. Ann. 16 (1848); *Goldman v. Goldman*, 51 La. Ann. 761, 25 So. 555 (1899); *Eugene Dietzgen Co. v. Kokosky*, 118 La. 449, 37 So. 24, 66 L. R. A. 503 (1904). See also *Vonderbank v. Schmidt*, Note 4, supra.

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1. 210 La. 1024, 29 So. (2d) 50 (1946).