

Michigan Law Review

Volume 38 | Issue 8

1940

CORPORATIONS - PROTECTION OF CORPORATE NAME - INJUNCTIVE RELIEF

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Recommended Citation

John L. Rubsam, *CORPORATIONS - PROTECTION OF CORPORATE NAME - INJUNCTIVE RELIEF*, 38 MICH. L. REV. 1320 (1940).

Available at: <https://repository.law.umich.edu/mlr/vol38/iss8/16>

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CORPORATIONS — PROTECTION OF CORPORATE NAME — INJUNCTIVE RELIEF — Plaintiff sought an injunction restraining defendant from using its corporate name in insuring real estate titles in the District of Columbia. The corporate names of plaintiff and defendant are identical except for the difference between the words "company" and "corporation." Plaintiff is a District of Columbia corporation organized in 1896 under the name "Lawyers Title Insurance Company." Defendant was incorporated in Virginia in 1925 under the name "Lawyers Title Insurance Corporation." From 1896 to 1922 plaintiff conducted its business entirely independently. In later years it made a "working agreement" with two other District title companies. A majority of the stock of these three corporations is now held by a fourth, the Consolidated Title Company. All these corporations under the "working agreement" have identical employees. Only the profits are kept in separate bank accounts from which each pays its own dividends, taxes and license fees. The findings of fact state that plaintiff and its associates are called generally by the public, "the District Title Company," and that plaintiff is not referred to in business circles as "the Lawyers Title Insurance Company," and that there is no evidence that plaintiff ever acquired a reputation under that name alone. *Held*, plaintiff abandoned the right of exclusive use of its name by associating with other corporations under a holding company and engaging in the same business under a conglomerate name. *Lawyers Title Insurance Company v. Lawyers Title Insurance Corporation*, (App. D. C. 1939) 109 F. (2d) 35, cert. denied (U. S. 1940) 60 S. Ct. 806.

The case involves no deliberate attempt by one competitor to simulate another or crafty scheme for luring away business by deception. Both parties have conducted themselves honorably. The only question is whether plaintiff has an exclusive right, by virtue of prior appropriation in the District, to use the name which each has acquired lawfully and with honest purpose. It is universally recognized that a corporation may restrain the imitation of its corporate name where unfair competition will result.¹ But where the use of the name does not

¹ Federal Securities Co. v. Federal Securities Corp., 129 Ore. 375, 276 P. 1100 (1929).

amount to unfair competition, there is some uncertainty as to the exclusive right to a corporate name. In most jurisdictions there are statutes which forbid the adoption by a corporation of a name so similar to that of another corporation as to be misleading or productive of confusion.² In such states the question of availability of a proposed corporate name is determined in the first instance by the secretary of state. As a matter of courtesy on the part of the department of state, this determination may be obtained upon request in advance of organization, and although the ruling of the secretary of state is not final, it is given due weight by the courts.³ The purpose of these statutes has been well expressed as follows: "Courts of equity are frequently called upon to remedy conditions which grow out of the use by a corporation of a name similar to the name of another corporation, carrying on a business of the same character. In such cases it is usually, if not always, true that relief is granted because experience has demonstrated that the public is misled, and the corporation first established is defrauded on account of the similarity of the names. We assume that the statutes referred to were intended to prevent, to some extent, the conditions which, in such cases, when they arise, make a resort to the courts necessary."⁴ However, it is not necessary to have such a statute in order to obtain relief, as a corporation is entitled to protection upon general common-law principles. At common law, corporate names are protected against their unauthorized use by others only where one corporation is attempting to palm off its goods on the public as those of another corporation.⁵ Therefore actual competition becomes an important factor where there is no statute in effect. A corporate name is looked upon as being essentially a trade name or a trade mark when used in connection with the business of the corporation.⁶ And when the question of imitation of a cor-

² E.g., Mich. Pub. Acts (1931), No. 327, § 6: "No corporation shall assume any name . . . already in use by any other existing corporation of this state, or corporation lawfully carrying on business in this state, or so nearly similar thereto as to lead to confusion or deception. . . ." See also WILGUS and HAMILTON, MICHIGAN CORPORATION LAW 72-78 (1932).

Other states have similar provisions: Del. Rev. Code (1935), § 2037; Ill. Stat. Ann. (Smith-Hurd, 1935), c. 32, § 157.10; N. Y. Consol. Laws (McKinney, 1929), bk. 22, "General Corporation Law," § 9; Ohio Gen. Code (Throckmorton, 1930), § 8623-5.

³ Young & Chaffee Furniture Co. v. Chaffee Brothers Furniture Co., 204 Mich. 293, 170 N. W. 48 (1918).

⁴ 66 A. L. R. 948 at 952 (1930). Where the statute only prohibits the adoption of an identical name, a court of equity will carry out the purpose of the legislature and enjoin the use of similar names, also. Cleveland Opera Co. v. Cleveland Civic Opera Assn., 22 Ohio App. 400, 154 N. E. 352 (1926).

⁵ Standard Oilshares Inc. v. Standard Oil Group, 17 Del. Ch. 113, 150 A. 174 (1930); Good Housekeeping Shop v. Smitter, 254 Mich. 592, 236 N. W. 872 (1931).

⁶ American Steel Foundries v. Robertson, 269 U. S. 372, 46 S. Ct. 160 (1926). In Holmes, Booth & Haydens v. Holmes, Booth & Atwood Mfg. Co., 37 Conn. 278 at 293 (1870), the court said: "The law having authorized the selection of a name, and having declared the name so selected to be the name of the corporation, we see no reason why the law should not protect the corporation in the use of that name, upon

porate name comes up in an injunction suit, the courts look upon it as being similar to a question of unfair competition.⁷ It is usually necessary to show that there has actually been confusion, but some courts have said that where the names were so similar as to lead to probable confusion, relief would be allowed.⁸ But it should be remembered that it is the business of the plaintiff corporation that is being protected and not a right to the exclusive use of its name alone. The business and good will and not the name itself are protected. And therefore only where there is unfair competition will the courts grant an injunction. However, as pointed out before, by statute in some states corporations have been granted a property right in the name alone and no need of showing actual competition is necessary.⁹

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the same principles, and to the same extent, that individuals are protected in the use of trade-marks."⁷

⁷ *Federal Securities Co. v. Federal Securities Corp.*, 129 Ore. 375, 276 P. 1100 (1929).

⁸ *Metal Craft Co. v. Metalcraft Heater Corp.*, 255 Mich. 642, 239 N. W. 364 (1931).

⁹ For complete collection of cases on this question, see 66 A. L. R. 948 (1930), and 115 A. L. R. 1241 (1938); 6 FLETCHER, CYCLOPEDIA CORPORATIONS, §§ 2425-2432 (1931).