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deduction is allowable. The rule that taxing statutes must be construed in favor of the taxpayer does not apply where deductions are concerned. *Gould v. Gould*, 245 U.S. 151 (1917); *Sheed v. Comm'r.*, 237 F.2d 345 (9th Cir. 1956).

*Fred Adkins*

**Unfair Competition—Infringement of a Trade Name**

Polaroid Corporation, plaintiff, brought this action against Polaraid, Inc., defendant, for injunctive and other relief based upon the use by $D$ of $P$'s corporate name or a colorable imitation thereof in connection with $D$'s business operation. $P$ sought relief in a three-count complaint. The first count charged that the $D$ infringed upon the registered trade-mark, "Polaroid," of the $P$. The second count charged the $D$ with unfair competition in appropriating and using as its trade name and trademark, "Polaraid," which is substantially identical and confusingly similar to $P$'s trade name and trademark. The third count charged the $D$ with violation of the Illinois Anti-dilution Statute. ILL. REV. STAT. ch. 140, § 22 (1959). The United States District Court for the Northern District of Illinois rendered judgment for the $D$. $P$ appealed. *Held*, reversed. Injunctive relief was granted even if no competition existed between the parties because the resemblance of the different trade names was so close that it would likely produce confusion. *Polaroid Corp. v. Polaroid, Inc.*, 319 F.2d 830 (7th Cir. 1963).

The principal case raises the question of what must be shown to entitle a party to injunctive relief for unfair competition. In reference to unfair competition, courts in the past have handed down different tests to follow in determining if an injunction should be granted.

Once the rule on trademarks took shape, business pirates thought of new ways to take advantage of another's good-will. Equity attempted to protect the honest businessmen by developing the law of unfair competition. At the beginning the courts found it extremely difficult to find unfair competition between the parties where there was no competition because most of the precedents involved a business "passing off" their goods as belonging to another and "passing off" explained and determined most of the cases. Hence, courts began to apply the proposition that there could be no unfair com-
petition unless there was actual competition between the parties. Note, 38 Harv. L. Rev. 370 (1925). The basis of the rule that there had to be competition between the parties before there could be unfair competition was that the plaintiff should receive no relief unless he suffered damages, such damages generally meaning monetary loss. Where the defendant was not in actual competition with the goods or sources of the plaintiff, there was no diversion of trade from the plaintiff to the defendant, and without this there was no monetary loss or damages to the plaintiff. Without a monetary loss the courts could not justify granting an injunction to the plaintiff. Annot., 148 A.L.R. 12, 19 (1944).

When the courts insist that there has to be competition between the parties before there can be unfair competition, their only theory must be based upon the principle that goodwill and reputation can only be damaged by competition. This contention is untenable in the light of human experience in that if the public is confused and believes that the defendant's products are those of the plaintiff, or that the plaintiff is a sponsor of the defendant, a sufficient case for injunctive relief is presented. An adverse holding would mean that the good-will and reputation of the plaintiff would not only depend on itself, but also on the conduct of the defendant and the inferiority of his products. Note, 38 Harv. L. Rev. 370 (1925).

Many of the recent cases have stated that competition is no longer the essential test. The court stated in Philadelphia Storage Battery Co. v. Mindlin, 163 Misc. 52, 296 N.Y.S. 176 (Sup. Ct. 1937) that two products need not be competitive before an injunction can be granted. The word "unfair" rather than "competition" should be underscored in any judicial definition of unfair competition. A false impression may be made between the parties showing a trade relation and this may cause injury to the plaintiff's credit and reputation. Relief should not be denied just because there has been no actual injury. This would deprive the equitable remedy of its most valuable trait which is preventive justice. Also the defendant's products do not have to be inferior in order to merit relief, for this would convert the court into a laboratory for the testing of rival products and claims. New competition and enterprise must not be throttled, but the late comer should be forced to use his own originality, rather than misrepresentation, for his market. The court in Vogue Co. v. Thompson-Hudson Co., 300 Fed. 509 (6th Cir. 1924) stated that there could be unfair competition between the parties if one party...
infringed upon the trade name of the other even if the parties were not in competition with each other. The court said there was no fetish in the word "competition" and the invocation of equity rests more vitally upon the unfairness.

The question remains as to what has to be shown to prove unfair competition when there is no competition between the parties. The emphasis in the recent cases concerning trade names and unfair competition relates to the injury suffered by the complaining party and the public from the confusion caused from the acts of the infringer. Under this modern view it is no longer a defense that the defendant did not deprive the plaintiff of trade. Annot., 148 A.L.R. 12, 22 (1944).

The court stated in Household Fin. Corp. of Del. v. Household Fin. Corp. of W. Va., 11 F. Supp. 3 (N.D. W. Va. 1935), that to show unfair competition, it was not necessary to show that any person has been actually deceived by defendant's conduct and led to purchase his goods believing they were the goods of the plaintiff, or to think he was actually dealing with the plaintiff. It was sufficient to show that deception would be the probable result of defendant's actions. It is a fraud to use the name or slight variation of such name, in such a way as to induce third persons to deal with defendant when third persons think they are dealing with the corporation that first used the trade name.

In Certain-Teed Prod. Corp. v. Philadelphia & Suburban Mortgage Guar. Co., 49 F.2d 114 (3d Cir. 1931) the court held that a likelihood of confusion of the public was enough to grant injunctive relief for unfair competition. The rights of the plaintiff depend upon the likelihood of the public confusing either the goods of the plaintiff with the goods of the defendant, or the business of the plaintiff with the business of the defendant. In every case where the defendant has been restrained there has been a reasonable likelihood of confusion existing. The court in Winery v. Goltsman & Co., 172 F. Supp. 826 (N.D. Ala. 1959) held that the test of infringement assumes there will be an average purchaser buying in the usual manner. The court held in Metropolitan Life Ins. Co. v. Metropolitan Ins. Co., 277 F.2d 896 (7th Cir. 1960) that injunctive relief would be granted in cases where deceptively similar names are used even though there is no actual proof of confusion. All that has to be shown is the likelihood of confusion and that the public might be misled. The court held in Lady Esther, Ltd. v. Lady Esther Corset Shoppe, Inc.,
317 Ill. App. 451, 46 N.E.2d 165 (1943) that an injunction should be granted for infringement of a trade name if the public thought there was any connection between the plaintiff and defendant. In Nat'l City Bank v. Nat'l City Window Cleaning Co., 180 N.E.2d 20 (Ohio 1962) the court said that the confusion may be in a rather indefinable manner.

A mere possibility of confusion is not enough, but there must exist a reasonable chance or a likelihood of confusion. There is always a chance of some confusion in using the same word in different businesses. To hold such a chance sufficient, would give the first user the absolute right to hold and control the word in any business and any goods he desires. It must be remembered that today, with business expanding as it is, it is possible, if not probable, that one business will make several unrelated products with the same trade name attached to them. This shows that the real issue is not if the customer might confuse the goods, but that the origin and source of the goods might be confused. Annot., 148 A.L.R. 12, 63 (1944). It would seem that the difference between a "mere possibility" and a "likelihood" of confusion is a fine point in the law.

In the principal case it was shown that there need not be competition between the parties before an injunction will be granted against unfair competition. Also, there need be no relationship between the products in question. The plaintiff in the principal case sold photographic supplies and the defendant sold refrigeration and heating equipment. Relief was granted because there was a likelihood of confusion of the public and this would dilute the valuable trade name of the plaintiff.

It would seem that the general view today is that an injunction will be granted for infringement of a trade name even if there is no competition between the parties. The real test in determining if there is unfair competition is to see if the public is likely to be confused. This confusion concerns third persons thinking the products of the defendant are those of the plaintiff or that in any way they believe that the plaintiff and defendant operate together. There is no certain clue for cases in determining if there is a likelihood of confusion. The facts of each case must be weighed individually.

William Walter Smith