

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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8317. Alterations on register—Order of court.

Where part of registered land was sold but retention certificate issued to original owner omitted portion of unsold land, petition to the court is necessary to correct the record. Op. Atty. Gen. (374j), Sept. 3, 1942.

8328. Registrar's fees.

(4).
In view of §3199-26(6) register of deeds paid only on a fee basis is entitled to a fee of only 25 cents in filing a certificate of lien in respect of old age assistance payments, though such certificate necessitates entry of a memorial on register or a cancellation in connection with registered lands. Op. Atty. Gen. (521p-4), Jan. 31, 1940.

CHAPTER 65A

Registration of Certain Trade-Names

8331. Use of receptacles without consent, etc.

If owner of a case of carbonated beverages sells trade-marked bottles as well as contents, it would not be unlawful for second hand dealers to traffic in such bottles, and it is a question of fact whether traffic in particular bottles is unlawful. Op. Atty. Gen. (135b-3), Aug. 20, 1942.

COMMON LAW DECISIONS
RELATING TO
TRADE-MARKS AND TRADE NAMES IN GENERAL**1. In general.**

Registration of trade-names, see c. 56B. *Idem* sonans, c. 56B, end, note 2.

Where generic words are used in a trade-name, as against a later user, the first is entitled only to have the manner of use so reasonably restricted as to avoid deception and confusion. *Houston v. Berde*, 211M528, 2NW(2d)9. See Dun. Dig. 9670.

A trade-name is a word or phrase by which a business or specific merchandise is made known to public. *Id.*

"Food Centre", as the name of retail grocery stores, held generic, generally descriptive only, and so not susceptible of monopolization as a trade-name. *Id.*

When used as a trade-name, artificial or made-up words are sole property of him who makes them up and first uses them. *Id.*

Secondary meaning is association, nothing more, and when acquired by descriptive words, competitors must use them so as to avoid deception and confusion. *Id.*

A trade-name can be acquired only by appropriation and use, and right to a trade-name, being for protection of business of owner, has no other existence, and right to it is not one in gross or at large, and owner cannot, like owner of a patent, make a purely negative and merely prohibitive use of it as a monopoly. *Direct Service Oil Co. v. Honzay*, 211M361, 2NW(2d)434. See Dun. Dig. 9670.

A trade-name is a word or phrase by which a business or specific articles of merchandise from a specific source are known to the public. *Id.*

Absent statute, a trade-name like a trade-mark cannot project right of protection in advance of extension of the trade, or operate as a claim of territorial rights over areas into which it thereafter may be deemed desirable to extend the trade. *Id.*

In action to enjoin use of trade-name, fact that words involved are part of plaintiff's corporate name does not entitle it to relief simply because of that fact. *Id.*

Territorial extent of right to use trade name. 5 Det. Law Jnl. 206.

2. Unfair competition.

Manufacturer of "Parchesi" held entitled to preliminary injunction restraining use of name "Parchesi" and "Parchisi" pending determination of suit for trade-mark infringement and unfair competition. *Selchow & Righter Co. v. W.*, (CCA7, 112F(2d)430, aff'g (DC-Wis), 29FSupp 569.

Use of name "Berde's Food Center" was not a "misrepresentation" calculated to mislead public because Berde owned only meat and dairy departments and sublet to others who owned and operated grocery, fruit, and bakery departments, complaint being made by operator of "Food Centre Stores". *Houston v. Berde*, 211M528, 2NW(2d)9. See Dun. Dig. 9670.

Use of trade-name "Berde's Food Center" was not unfair competition with chain store owner operating under

name "Food Centre Stores", name appearing in one horizontal sign, all in same large letters. *Id.*

An operator of gasoline and oil filling stations at which automobile accessories and other merchandise are sold who by appropriation and use has acquired a trade-name is not entitled to protection of trade-name against operator of a similar station in a market where it has no station and where it does not compete for business. *Direct Service Oil Co. v. Honzay*, 211M361, 2NW(2d)434. See Dun. Dig. 9670.

Protection of a trade-name is afforded upon ground of unfair competition, and relief is granted to protect owner of trade-name against diversion of his trade to a later user or simulator by latter's fraud and deception in misleading buying public to believe that his goods are those of owner of trade-name. *Id.*

Where goods of first user of a trade-name are sold in markets of a second user at time of commencement of such use by latter, first user's right to trade-name will be protected regardless of distance between places at which parties conduct their business. *Id.*

If there is no competition, it makes no difference that first user of a trade-name operates his business through multiple units located in different parts of the state, and right of a chain store operator is no different than that of others. *Id.*

3. Sale and transfer.

Peterson v. Johnson Nut Co., 204M300, 283NW561; 209M470, 297NW178.

Mutual covenants not to compete in certain territory in connection with sale of a branch business followed assignment of contract by purchaser of branch to a corporation formed, and involuntary bankruptcy of assignee did not end or affect covenant, insolvency and adjudication was not anticipatory breach, and right to enforce covenant passed by sale of trustee in bankruptcy of assets and good will. *Peterson v. Johnson Nut Co.*, 209M470, 297NW178, construing 204M300, 283NW561. See Dun. Dig. 4046, 8436.

4. Damages.

In an action at law for wrongful interference with a business measure of damages is loss shown to business, but in an action in equity to enjoin violation of a covenant not to compete in a given territory, there may be an accounting for profits gained by violator of covenant, and such illegal profits may properly measure the damages. *Peterson v. Johnson Nut Co.*, 209M470, 297NW178. See Dun. Dig. 2561.

In action to enjoin corporation from competing with plaintiff in a certain district in violation of contract, wherein president of defendant admitted that territory protected by covenant had been invaded and goods sold in a certain amount and that six per cent thereof could fairly be taken as profit defendant made, a finding that plaintiff offered no competent evidence of damages cannot be sustained. *Id.* See Dun. Dig. 8436.

5. Actions.

That a certain corporation is interested in having a defendant excluded from territory wherein it operates does not make it in law or fact a real party in interest in an action by another corporation to enjoin defendant from competing with plaintiff in certain areas in violation of a covenant contained in sale of branch of business. *Peterson v. Johnson Nut Co.*, 209M470, 297NW178. See Dun. Dig. 7315, 8436.

There being no evidence of confusion and nothing to show that manner of defendant's use of descriptive words in trade-name tends to confusion beyond that which necessarily arises from legitimate use thereof, there should be no injunction. *Houston v. Berde*, 211M528, 2NW(2d)9. See Dun. Dig. 9670.

CHAPTER 66

Homestead Exemption

8336. Dwelling place exempt—Exceptions.**1. Nature.**

Homestead exemption is a creature of statute. *Dimke v. F.*, 209M29, 295NW75. See Dun. Dig. 4195.

In partition, where separate owners each had a home building on one tract of land and that tract and another

some distance away were sold en masse, sale was valid as against alleged homestead rights where there was a relatively large single mortgage covering both tracts and court retained jurisdiction to pass upon any homestead claims and enforce them against proceeds of sale. *Burke v. Burke*, 209M386, 297NW340. See Dun. Dig. 7343.