

Trade Marks - Unfair Competition - Right of Privacy

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Grand & Sixth Bldg., Inc., 206 Wis. 100, 238 N.W. 867 (1931); *Washburn v. Skogg*, 204 Wis. 29, 233 N.W. 764 (1931). A "frequenter" is defined as "every person other than an employee who may go in or be in a public building under circumstances which render him other than a trespasser." WIS. STAT. (1933) § 101.01. A trespasser is one on the premises without invitation, express or implied, and solely for his own pleasure, convenience, or purpose. *Peake v. Buell*, 90 Wis. 508, 63 N.W. 1053 (1895); *Zartner v. George*, 156 Wis. 131, 145 N.W. 971 (1914); *Klemens v. Morrow Milling Co.*, 171 Wis. 614, 177 N.W. 903 (1920). The duty of the owner to maintain in a safe condition a building that is a public building under the statute extends only to that portion of the premises which is used by tenants or the public. *Gobas v. Val Blatz Brewing Co.*, 179 Wis. 256, 191 N.W. 509 (1923); *Bewley v. Kipp*, 202 Wis. 411, 233 N.W. 71 (1930). In the instant case the plaintiff alleged that the defendant had failed to comply with the statute stipulating the degree of safety necessary in buildings of this character. WIS. STAT. (1933) § 101.06. This allegation would have been correct had the plaintiff sustained injuries under similar circumstances in some portion of the building provided for the use of tenants. The trial court held the plaintiff to be a frequenter, not a trespasser, and therefore within the protection of the statute. This contention was overruled on appeal, the court stating that since the plaintiff entered a portion of the building not maintained for the use of the tenants and and to which the tenants were not invited, either expressly or by implication, she became a trespasser. Since a trespasser is afforded no protection under the statute, the plaintiff has no cause of action.

CLAYTON A. CRAMER.

TRADE MARKS—UNFAIR COMPETITION—RIGHT OF PRIVACY.—The plaintiff is a manufacturer of baseball bats. For a consideration, paid to the persons concerned, it obtained the exclusive right to use the names of prominent baseball players. The defendant company is a competitor of the plaintiff. Without authority from the assignors or from the plaintiff, the defendant used the same names on its manufactured product. There is no question of similarity in appearance of the two sets of bats. The plaintiff asked for an injunction restraining the defendant from using on its bats the names of the baseball players who had given to the plaintiff the exclusive right to the use of their names. The trial court granted the relief as requested. On appeal, *held*, judgment modified, and as modified, affirmed; the defendant's conduct amounted to unfair competition. *Hanna Mfg. Co. v. Hillerich & Bradsby Co.*, 78 F. (2d) 763 (C.C.A. 5th, 1935).

Whether a person will be protected against the indiscriminate use of his name depends in each jurisdiction on the choice of policy made by the court or the legislature therein. It has been held that a prominent man cannot during his life, nor can his widow after his death, get relief against the use of his name and likeness in the advertising of articles for public sale where there is nothing libellous about the picture. *Atkinson v. John E. Doherty & Co.*, 121 Mich. 372, 80 N.W. 285, 45 L.R.A. 219 (1899). It was suggested therein that a person in public life waives his right to privacy to the extent that the public, too, has an interest in his likeness. An important court has held that no person will be protected against the indiscriminate use of his likeness or name by third parties until the legislature shall so prescribe. *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538, 64 N.E. 442, 59 L.R.A. 478 (1902); but see *contra*, *Pavesich v. New England Life Ins. Co.*, 122 Ga. 190, 50 S.E. 68, 69 L.R.A. 101 (1905) and *Munden v. Harris*, 153 Mo. App. 652, 134 S.W. 1076 (1911). Under the Civil Rights Law

(Cahill's Consolidated Laws of New York, 1930), Article V, Paragraphs 50 and 51, the legislature of New York has prescribed that the use of the name of a living person without his consent for the purposes of advertising or trade is a misdemeanor, and that the person whose name is so used may sue to restrain such use and recover damages from the defendant. The statutory directions have been carried out by the courts. See *Binns v. Vitagraph Co. of America*, 210 N.Y. 51, 103 N.E. 1108, L.R.A. 1915C, 839 (1913). It is obvious that where the individual himself cannot restrain the use of his own name by a third party his assignee cannot do so. And it has been held that the transfer of a name without a business is not enough to prevent others than the transferee from using the name. *L. E. Waterman Co. v. Modern Pen Co.*, 235 U.S. 88, 35 Sup. Ct. 91, 59 L.ed. 142 (1914). In those jurisdictions where a private individual is protected himself against the use of his name or likeness by third parties it does not follow therefrom that his assignee will be so protected. It has been held in a comparatively recent case that where a person's name has associated with its use something of value for advertising purposes, interests of a pecuniary nature resembling property rights are created in the name, and that these can be transferred so that the transferee will receive the protection of the equity court against its use by third parties. *Uproar Co. v. Nat'l Broadcasting Co.*, 8 F. Supp. 358 (D.C. Mass. 1934). It is to be noted, however, that in that case the person's name had acquired its advertising value by reason of its being associated with the transferee's business. It has been held, too, that where the assignor's name has acquired something of good will by reason of its association with his own business, the transferee of the business may be protected against the assignor's use of his name in that business or against his assigning it to some competitor of the original transferee. *Nisley Shoe Co. v. Nisley Co.*, 72 F. (2d) 118 (C.C.A. 6th, 1934). Perhaps there is in all of the cases between an assignee and the original assignor or some third party over the latter's carrying on business with the use of the same or like name as the assignor some element of what the court feels is unfair competition upon which it predicates any relief that it chooses to give. Along with the cases already cited, see *A. Weiskittel & Son Co. v. Harry C. Weiskittel Co.*, (Md. 1934) 173 Atl. 48; *Andrew Jergens C. v. Bonded Products Corporation*, 13 F. (2d) 417 (E.D. N.Y. 1926); *C. A. Briggs Co. v. National Wafer Co.*, 215 Mass. 100, 102 N.E. 87 (1913). In the principal case the court felt that the plaintiff was entitled to relief, not as an assignee of the "right to use" the names, but by reason of the fact that the defendant, by its advertising scheme, was getting a part of the plaintiff's trade. By the decree as finally ordered the defendant was allowed to use the names on its manufactured product providing the names were followed by the words "style" or "shape."

JOSEPH P. FLANNER.