

secondary meaning because it was used in a minor business, and perhaps in a restricted area. There may be, on the other hand, another mark that would obtain this secondary meaning in seven or eight years on account of the tremendous amount of sales all across Canada and the tremendous amount of advertising back of them. Those are variables.

Q. I would think that there should be a minimum, say, a period of five years.—A. Well, that cannot very well be done because, in a case like that, the minimum tends to become the maximum, and there again it seems to me that once you vest the registrar, and, on appeal, the court, with the discretion of answering this question, "Has it acquired that type of meaning?," with respect, I think he ought to have that discretion exercisable without any particular statutory limitation.

Q. This would involve some machinery that will be set out in the rules, I suppose? It will have to be something comparable to court procedures?—A. Quite. Always have been rules under the Trade Mark and Design Act and under the Unfair Competition Act.

Q. Will the power of the registrar extend to taking evidence in the form of depositions or questioning?—A. It must be an affidavit tendered to him—the proof that he requires to be made is to be by affidavit or declaration.

*By Mr. Crestohl:*

Q. I am in hearty agreement with the procedure you are outlining, which gives the registrar original jurisdiction to make a decision, but will he also have a similar original jurisdiction to expunge?—A. Only in the case of non-use; only where there has been proof of abandonment of the use of the mark.

Q. He is given some jurisdiction, but if the question arises on a protest or opposition he will then have to sit in some capacity as a gentleman who will render a decision. His decision can be appealed. Assuming that opposition might have been made if the party had been aware of the application, and he then goes to the registrar and says, "Now, I should have made opposition, but I did not know about it and I would like to have that trade mark expunged". Could the registrar not be given a similar original jurisdiction which he could exercise following representations and either order the expunging of the trade mark or not, and if the decision is not satisfactory then appeal in the same way could be made as one can appeal from his judgment to register?—A. Well, we think that, with respect, would be unwise, for two reasons. The first is, your whole procedure of opposition would, in a sense, be set aside for the time element would be meaningless. It would mean that anybody could come in de novo, at any stage you wished. The second reason is that, in all the legislation we have had on trade marks in this country in the past, there has been no jurisdiction given to expunge entries from the register except at the instance of the Exchequer Court, and we think it is important that the Exchequer Court should continue to have exclusive jurisdiction over the register to that extent.

Mr. JEFFERY: Mr. Chairman, can I get an answer as to the time of appeal, and also a further question as to what advertising is done in connection with the application?

The CHAIRMAN: Yes, I think this discussion leads up to that, Mr. Jeffery. Mr. Fox, can you give us information on that?

The WITNESS: I am sorry, Mr. Chairman, I did not get the question.

The CHAIRMAN: Could you give an answer in regard to the time for appeal and the extent of the publicity?

Mr. STEIN: Section 55 is the general section in connection with appeal, and it gives the right of appeal to the Exchequer Court from any decision