

right in a trade name in one locality and another person have a property right in the same word in another locality. *Sartor v. Schaden*, 125 Iowa 696; 101 N.W. 511.

BUSINESS SIGN NOT A TRADE MARK.

(Missouri App., 1911.) A business sign does not constitute a trade mark. *Covert et al. v. Bernal* (1911), 138 S.W. Repts. 103.

TRADE MARK, TRADE NAME--DISTINCTION BETWEEN.

(Sup. Ct. Kans., 1914). A "trade mark" relates chiefly to the thing sold, while a "trade name" involves also the individuality of the maker both for protection in trade and to avoid confusion in business. *Harryman v. Harryman* (1914), 144 Pac. 262.

The use of the name of a corporation as a trade mark was dealt with in *the Boston Rubber Shoe Co. v. Boston Rubber Co.*, of Montreal (1902), 32 Can. S.C.R. 315.

The plaintiff incorporated in Massachusetts in 1852; registered the trade mark in 1897. The defendant in 1890 sold rubber boots and shoes with the mark of "The Boston Rubber Co., of Montreal, Ltd.," and pleaded that the mark was in effect a corporate name and the use of it was not fraudulent. The trial by Audette held that the defendants were free to use their corporate name in the absence of fraud. The judgment was reversed by the Supreme Court which held that the word "Boston" had become an invented or fancied name. Sir Louis Davies said, at page 327:

"It seems to me, with great respect, very difficult on the evidence in this case to find that fraud and bad faith were absent; . . . The object . . . may not have been to deceive purchasers . . . but that such would have been the result, I entertain no reasonable doubt. If so, it would bring the case directly within the rule laid down by Lord Kingsdown in *Leather Cloth Co. v. American Leather Cloth Co.* (1865), 11 F.L. Cas. 523 at 538."

And at page 333, "Nor am I able to see how he can, by obtaining for himself and his associates letters corporate under the statute, do under cover of the corporate name what he otherwise would be prevented from doing. The defendant company has the right to use its corporate name for all lawful and legitimate purposes. It has not the right to use it, however, by stamping it upon goods it has manufactured and offered for sale, if by so doing it causes the purchasing public to believe that the goods are those of the plaintiff company." Restrained use of words "Boston" or "Bostons" in connection with rubber boots and shoes by stamping circular advertising without clearly distinguishing from the shoes of the plaintiffs.