A distinction must be drawn between a trade mark which is a mark on goods and a trade name used on a hotel, store or establishment. A trade mark as such must be applied to a vendible article. (*McAndrew* v. *Bassett* (1864), 4 DeG.J. & S. 380.)

The distinction between trade marks and trade names is pointed out by Sebastian, 5th ed., p. 17, as follows:

"In imitations of trade names, again, used as such and not as trade marks on goods, there is a difference from trade mark cases proper: there is a false representation, but it is a representation, not that certain goods are certain other goods, but that a certain establishment is a certain other establishment, the object being that the one establishment should obtain custom intended for the other. Such cases are not cases of trade mark, not being concerned with marks placed on vendible articles in the market (*McAndrew* v. *Bassett*, 4 De G.J. & S. 380) but still the Court has to proceed on much the same lines.

All such cases, whether of trade mark or trade name or other unfair use of another's reputation, are concerned with an injurious attack upon the goodwill of a rival business; customers are diverted from one trader to another, and orders intended for one find their way to another. *Trade marks are really a branch of the goodwill of the business with which they are connected, representing it in the market, while the trade name over the shop represents it to the passer-by.* It is by the devolution of the goodwill that that of the trade marks is regulated; (822 of the Trade Marks Act, 1905; Rules 76-81 of the Trade Marks Rules, 1906; see also 70 of the Patents Act, 1883; and 82 of the Trade Marks Act, 1875); they are in fact included in, and valued as part of, the goodwill (*Hall* v. *Barrows* (1863), 4 De G.J. & S. 150); severed from it they cannot exist. (*Thorneloe* v. *Hill*, [1894] 1 Ch. 569.)

This distinction has been adopted very widely in the United States as the following case will show:

TRADE MARK GENERAL—TRADE NAME LOCAL.

(N.Y. Supreme Court.) A trade mark designates an article of commerce and is affixed thereto. It is thus general or universal accompanying the article, while the trade name applies to a business and is as a rule local. A trade mark can be infringed anywhere but not so with a trade name, the owner of which has an exclusive right thereto in his locality only. *Ball* v. *Broadway Bazaar* (1907), 106 N.Y. Supp. 249; 121 App. Div. 546.

THEORY OF PROTECTION OF TRADE NAMES.

Trade names are protected on the theory that, while the primary and common user of a word or phrase may not be exclusively appropriated, there being a secondary meaning or construction which will belong to the person who has developed it. *Sartor* v. *Schaden* (1904), 125 Iowa 696; 101 N.W. 511.

TRADE NAME IS LOCAL—SAME NAME MAY BE USED IN DIFFERENT LOCALITIES.

(Iowa, 1904.) A trade mark covers the limits of the jurisdiction granting the same and is protected therein, a trade name is of necessity local, and is based on usage in a particular locality in which the user thereof is doing business; and as one person may own a trade mark in one country or jurisdiction and another own it in another, so one person may have a property