

SOME HINTS ON SELECTING A TRADE MARK.

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It is almost a daily experience with me to be asked to look at some design, or oftener some word, and to express an opinion of it as a possible trade mark. Sometimes the comparison is instituted between the proposed trade mark and one already known and used for some similar merchandise, and the question takes the form—"In view of that, would this be a good trade mark?" A good-natured person cannot be always refusing to express opinions on questions put to him on the assumption that his opinions are worth having. His natural self-complacency can scarcely resent such inquiries, and I commonly give a curbstone opinion, even when I had much rather not. Sometimes a mere word on the uncertain line which separates fanciful terms from those that are purely descriptive is shown to me, and I am asked to indicate whether it should be treated as a trade mark or as purely label matter. This is not always easy to decide. The nature of the merchandise, the rules of the trade, the particular circumstances of the case, a hundred things of one sort or another, may affect a proper judgment on such questions, and the person to whom they are put, whatever be his experience, may hesitate to answer.

I often mourn over what appears to me the great poverty of imagination among those who adopt trade marks. Certain familiar symbols appear over and over again, and applied to every variety of merchandise. The star, the cross, the anchor, the eagle, are found under various modifications everywhere. Words of a popular character like "Electric" and "Jumbo" are seized upon simultaneously for widely different goods, and there is no end to the persons who lay hold on such semi-descriptive adjectives as "perfect," "superb," "famous," "charming," "standard," "automatic," and the like.

There are a few simple notions on the selection of trade marks which might, perhaps, be called maxims, and the observation of which would save trouble and expense.

A trade mark right is in its nature perpetual. Patents expire with the term for which they are granted. Copyrights have a little longer term, and are renewable; but they exist only by virtue of statute law, and in the course of years they expire also. But a trade mark has no such limitation. The right it implies is not dependent on any statute, and has no term. Once secured, it goes on with the business, like the poet's brook, forever.

A man starts a small concern, identifying his products by his own trade mark. His sons grow up and are taken into partnership, while the business grows also, and the goods bearing the mark become more widely and favorably known. The style of the firm changes as well as in its personnel; it expands into a corporation or shrinks into a single individual, but the trade mark associated with the business and its product still belongs to the concern, and as long as the good character of the product is maintained, has a constantly increasing value. This is the history of many a reputable British house, like the great hosiery concern of Morley.

Many modern trade marks are adopted simply to attract trade by their own popular character. Such popularity is often most ephemeral, and the mark, having served its momentary purpose, is dropped for the next sensation. Technically, these are trade marks, while practically the part they perform is less to mark the merchandise as of a particular make than to attract customers by the sentiment they evoke. The persons who use them will not be guided by the maxims of trade mark law in adopting them. To those,

however, who propose to adopt trade marks for permanent use in a business which they hope may long continue and outlast the ordinary business life of an individual, I suggest:—

1. Let your trade mark have individuality; whether it be some pictorial symbol affecting the eye only, or a newly coined word, or some term used arbitrarily and fancifully, let it have a distinct character of its own. The world of fanciful words and designs is boundless. There is never any need of intruding on the ground some other has selected; and you should select for your trade mark something as far as possible unlike anything used by others on the same class of merchandise. The moment you begin to question in your mind whether you are safe in adopting a six-pointed star for use on your goods, while your neighbor is using already a five-pointed one, it is time to stop. If there is such doubt in your mind, always resolve it against yourself. You may be sure that if the faintest doubt comes to you, it will come to others also, and will becloud your title to that extent. The Irish coachman's rule was a good one; when asked how near he would drive to the edge of a precipice, while others were vaunting their skill and indicating the inches within which they would dare to approach, he scratched his head and said, "Faith, I'd kape as far off as I cul." I have never seen the rule laid down, but I had it as a fact from a recent Solicitor-General of Great Britain, that in the registry of trade marks the British office always resolves doubts of this kind against the applicant, holding that if the resemblance is so close as even to excite doubt, an honest man ought to select something else not liable to that objection.

It is not always easy to devise an absolutely unique trade mark, but that should be the objective point, and the nearer you can attain to it, the better.

2. A trade mark must be something to which the manufacturer has an exclusive right as a mark for his goods. Not an absolute right, since there can exist no such right to a symbol. But to say that there must exist an exclusive right as against any other person already making or selling similar merchandise is scarcely more than repeating what has been said already. More than this, there must be such a right as will exclude the general public now and in the future. If you are making gum-drops, you may call them *delicious*, may call them so whether they are so or not, but you can have no monopoly in the right to call them so. That is the privilege of every one. Consequently, you cannot take that word for your trade mark; and this is true of all words that describe merchandise, as adjectives of quality, those which define some quality or characteristic of the merchandise, or which assert its superiority, those which indicate geographically the place of origin, those which indicate ingredients, in short, all words which others may use with equal truth to describe their goods. You cannot shut out the public from any fraction of the right they already possess in the ordinary words of the language. Every man has a right to advertise his merchandise, to describe it, and to extol it as he will. So you cannot adopt as your trade mark that which is merely a picture of your merchandise. Any man may make a clothes wringer or an ore crusher, and use a cut of it in connection with his advertisements. If you have any monopoly in a machine, it is by virtue of a patent; and when seventeen relentless years have passed, all your right lapses, and you cannot perpetuate it, or narrow the rights of any member of the public who may care to manufacture and sell it, by exclusively holding the right to use a picture of it.

3. Do not multiply your trade marks. One distinctive