

[See *the Horlick's Malted Milk* (1917), 35 D.L.R. 516, and annotation thereto at p. 519.]

2. *Companies—Corporate names—Conflict—Declaratory order.*

The use of a corporate name, as chartered, cannot be restrained merely because it resembles in part the name of another corporation and its trademark; it is no ground for a declaratory order.

3. *Estoppel—Laches—Infringement of trademark—Injunction.*

A delay of several months in bringing an action for injunction, after the discovery of the infringement of a trademark, does not amount to such laches or acquiescence as will deprive the plaintiff of his remedy.

Teed, K.C., and Gregory, K.C. for plaintiff. *Powell and Hughes,* for defendant.

ANNOTATION ON ABOVE CASE FROM 37 D.L.R.

Distinction between trademark and trade name and rights arising therefrom.

By RUSSEL S. SMART, B.A., M.E., OF THE OTTAWA BAR.

Sections 5 and 11 of the Trade-Mark and Design Act (R.S.C. 1906, c. 71) read:—

5. All marks, names, labels, brands, packages or other business devices, which are adopted for use by any person in his trade, business, occupation or calling for the purpose of distinguishing any manufacture, product or article of any description, manufactured, produced, compounded, packed or offered for sale by him, applied in any manner whatever either to such manufacture, product or article, or to any package, parcel, case, box or other vessel or receptacle of any description whatsoever containing the same shall, for the purposes of this Act, be considered and known as trade-marks. R.S., c. 63, s. 3.

11. The Minister may refuse to register any trade-mark:—

(a) If he is not satisfied that the applicant is undoubtedly entitled to the exclusive use of such trade-mark;

(b) If the trade-mark proposed for registration is identical with or resembles a trade-mark already registered;

(c) If it appears that the trade-mark is calculated to deceive or mislead the public;

(d) If the trade-mark contains any immorality or scandalous figure;

(e) If the so-called trade-mark does not contain the essentials necessary to constitute a trade-mark properly speaking. 54-55 V., c. 35, s. 1.

REFER TO ENGLISH LAW FOR DEFINITION OF TRADE-MARK.—The classification of sec. 5 does not constitute a definition of trade-marks. For this purpose, reference must be had to English Law (*Standard Ideal Co. v. Standard Sanitary Manufacturing Co.*, [1911] A.C. 78).

It is necessary, however, to use the English decisions with care, especially those since 1875, which are generally limited to interpretation of the definition of registrable trade-marks found in the Trade-Marks Registration Act of 1875 and subsequent Acts.