

wholly remote the one from the other, the question of prior appropriation is legally insignificant; unless at least it appear that the second adopter has selected the mark with some design inimical to the interests of the first user, such as to take the benefit of the reputation of his goods, to forestall the extension of his trade, or the like."

The following earlier decisions in the United States shew the development of the law:

Infringement—Right to injunction—Use of mark in different localities.

(U.S. Circuit Court, N.Y.). Complainant and its predecessors in Baltimore, and defendant and its predecessors in New York City, each for more than 30 years produced and sold a rye whiskey under the name of "Baltimore Club." Complainant's business was chiefly local and did not extend to New York City until shortly before the commencement of this suit, when it placed its goods in the market there. Defendant's business was larger, and whatever reputation or value attached to the name in New York was due to its efforts and its goods. *Held*, that complainant, even if conceded priority of use in the limited area of its business, had no standing to enjoin defendant's use in New York since that would be to further the deception of the public there, which it is the primary object of equity in such cases to prevent. (See Trade Marks and Trade Names, Cent. Dig. §93; Dec. Dig. §84, 88.) *Thomas G. Carroll & Son Co. v. McIlwaine & Baldwin Inc.* (1909), 171 Fed. 125.

Use of mark in territory where plaintiff's goods unknown—Not restrained.

(U.S. Circuit Court of Appeals, 7th Cir.) Complainant, an Ohio Milling company, since 1872 has used the name "Tea Rose" as a common-law trade mark for one of its brands of flour, but has never sold such brand in the territory southeast of the Ohio river comprising the States of Georgia, Florida, Alabama, and Mississippi, although it has recently made some effort to establish a trade there in other brands. Defendant, without knowledge of its prior use by complainant, since 1893 has used the name "Tea Rose" for one of its own brands of flour in which it has built up an extensive trade in the States named, where the name has come to mean defendants' flour and no other kind. *Held*, that complainant was not entitled to an injunction to restrain defendant from using the name in such territory. *Hanover Star Milling Co. v. Allen & Wheeler Co.* (1913), 208 Fed. 513.

First to adopt enjoined from unfair competition in territory—First occupied by one last to adopt.

(U.S. Supreme Ct., 1916.) Where it appeared that the plaintiff had through a long period of years established a valuable trade in the South-eastern States, particularly Alabama, in connection with the use of an alleged trade mark "Tea Rose," so that its mill in Illinois became known as the "Tea Rose Mill," and the defendant, though also a user of the mark "Tea Rose" for a considerable period, had but recently invaded the territory in question and by unfair means had attempted to cut into the trade of the plaintiff by selling flour under this mark in Alabama. *Held*, that the plaintiff is entitled to an injunction against defendant irrespective of its claim to affirmative trade mark rights in that territory and notwithstanding the