The owner of a trade mark may not, like the proprietor of a patented invention, make a negative and merely prohibitive use of it as a monopoly. See *United States* v. *Bell Telephone Co.* (1896), 167 U.S. 224, 250, 17 Sup. Ct. 209, 42 L. Ed. 144; *Bement* v. *National Harrow Co.* (1901), 186 U.S. 70, 90, 22 Sup. Ct. 747, 46 L. Ed. 1058; *Paper Bag Patent Case* (1908), 210 U.S. 405, 424, 28 Sup. Ct. 748, 52 L. Ed. 1122.

In truth a trade mark confers no monopoly whatever in a proper sense, but is merely . . . a distinguishing mark or symbol—a protection of one's goodwill in trade by placing a distinguishing mark or symbol—a commercial signature—upon the merchandise or the package in which it is sold.

It results that the adoption of a trade mark does not, at least in the absence of some valid legislation enacted for the purpose, project the right of protection in advance of the extension of the trade, or operate as a claim of territorial rights over areas into which it thereafter may be deemed desirable to extend the trade. And the expression, sometimes met with, that a trade mark right is not limited in its enjoyment by territorial bounds, is true only in the sense that wherever the trade goes, attended by the use of the mark, the right of the trader to be protected against the sale by others of their wares in the place of his wares will be sustained.

Property in trade marks and the right to their exclusive use rest upon the laws of the several States, and depend upon them for security and protection; the power of Congress to legislate on the subject being only such as arises from the authority to regulate the commerce with foreign nations and among several States and with the Indian tribes. Trade Mark Cases, 100 U.S. 82, 95, 25 L. Ed. 550. (Points out Act of Congress limited to Interstate Trade.) (*Massachusetts* v. *Louisville T.M.* "Rex," a registered trade mark.)

This was following the earlier cases of *Hanover Milling Co.* v. *Metcalfe* (1916), 240 U.S. 403, 36 Sup. Ct. Rep. 357 at 360, in which their opinion was expressed as follows:

"The essence of the wrong consists in the sale of the goods of one manufacturer or vendor for those of another. *Canal Co.* v. *Clark*, 13 Wall. 311, 322; *McLean* v. *Fleming*, 96 U.S. 245, 251; *Amoskeag Manufacturing Co.* v. *Trainer* (1879), 101 U.S. 51, 53; *Menendez* v. *Holt* (1888), 128 U.S. 514, 520; *Lawrence M'fg. Co.* v. *Tennessee M'fg. Co.* (1891), 138 U.S. 537, 546, 11 Sup. Ct. Rep. 396.

This essential element is the same in trade mark cases as in cases of unfair competition unaccompanied with trade mark infringement. In fact, the common law of trade marks is but a part of the broader law of unfair competition. *Elgin Watch Co.* v. *Illinois Watch Case Co.* (1901), 179 U.S. 665, 674; *G. & C. Merriam Co.* v. *Saalfield*, 198 Fed. Rep. 369, 372; *Cohen* v. *Nagle* (1906), 190 Mass. 4, 8, 15, 2 L.R.A. (N.S.) 964; *S. A. & E. Ann. Cas.* 553, 555 558" (Reprd. p. 415), and cases to the effect that the exclusive right to the use of a trade mark is founded on priority of appropriation, 36 Sup. Ct. Rep., at 361. "But these expressions are to be understood in their application to the facts of the cases decided. In the ordinary case of parties competing under the same mark in the same market, it is correct to say that prior appropriation settles the question. But where two parties independently are employing the same mark upon goods of the same class, but in separate markets