

be disassociated to some extent from plaintiffs' goods, and hence not calculated to create the impression in the mind of the public that the defendants' fly poison was the same as that of the plaintiffs.

*Held*, that the word "pads" had become in such a measure *publici juris* that the defendants were entitled to call their poison sheets "pads," especially as the general appearance was different, and the word "pads" on defendants' packages was not given any undue prominence likely to mislead purchasers.

Judgment of Rose, J., affirmed.

*Wilson v. Lyman*, 325.

4. *Sale of Business—Right to Use After Expiry of Fixed Period.*]—Where the proprietor of a trade name sells the business and good-will thereof, together with the right to use the trade name for a fixed period, and after that period the purchaser continues to use, the proprietor cannot restrain the use of such trade name by the purchaser after the expiry of the fixed period, when he neither carries on nor intends to carry on a business under that firm name.

*Love v. Latimer*, 373.

5. *Place of Manufacture—Common Law Right—Proof of Deception.*]—A manufacturer, whose goods are generally known to the public by a certain name,

has a common law right to protection against a competitor using the same or some similar name, only upon making proof either of fraud or deception as regards such use, and of prejudice resulting therefrom.

Where the alleged infringement has extended over a number of years, the fact that there is no proof of anyone having been deceived during that period is very material.

Judgment of Davidson, J., reversed.

*Pabst v. Ekers*, 391.

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#### USER.

1. *First, Prime Essential of Trade Mark.*]—454.

See REGISTRATION (9).

2. *Not Necessary by Party Before Registration; but Must Follow Registration.*]—425.

See REGISTRATION (7).

3. *What Required to Make Descriptive Words Valid Trade Mark.*]—409.

See DESCRIPTIVE WORDS (5).

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#### WELL-KNOWN NAME.

*Not Subject of Trade Mark.*]—144.