

BOYD, C.

DECEMBER 9TH, 1913.

*GRAMM MOTOR TRUCK CO. v. FISHER MOTOR CO.

Trade Name—Company Making and Selling Motor Trucks—Advertising under Company's Name—Use of Similar Name by Rival Company—Failure to Shew Superinduced Secondary Meaning—Passing-off—Confusion from Use of Name—Distinctive Word—Descriptive Word—Injunction.

Action to restrain the defendants from using the word "Gramm" in their business as descriptive of motor trucks sold by them in competition with the plaintiffs.

H. E. Rose, K.C., for the plaintiffs.

A. W. Anglin, K.C., and R. C. H. Cassels, for the defendants.

BOYD, C.:—The plaintiffs conceived the design of starting a company in Canada for the supply of commercial motor trucks for the carriage of goods. A connection was formed with the Gramm Motor Company of Lima, Ohio, United States, and the plaintiff company was incorporated under the name it bears in November, 1910. Gramm was the name of a man who had planned the construction of a motor truck distinct from other like trucks, called by the names of their designers, in the United States. He was a member of the American company, and also joined the Canadian company as shareholder and director. The use of his name was sanctioned by him, and also the subsequent use of the same word for the purpose of a registered trade mark in July, 1913. The course of business of the plaintiffs was not manufacturing trucks, in the strict sense of the term, nor did they bring in machines as a whole, but they procured from the American company and elsewhere, as found convenient, separate parts, and assembled them together in their Walkerville premises, and put them on the market as finished products. The parts in each machine ran into the hundreds, and it is said that this making-up of the constituents is the most important part of the business. In the get-up of the motor truck various changes are being made by those in the business from year to year, and the plaintiffs are said to have developed many variations and improvements in the method of combination which differentiates the Gramm motor as made by them from the original American Gramm motor, as well as from those which are called "Gramm-Bernstein," now turned out in the United States by a

*To be reported in the Ontario Law Reports.