

1922  
Dec. 27.

HOME APPLIANCES MANUFACTUR- }  
ING CO., LTD..... } PETITIONER;

AND

ONEIDA COMMUNITY, LIMITED. . OBJECTING PARTY.

*Trade-marks—General trade-mark by a company—Right of another to register the same mark as a specific trade-mark as to goods which the former may be but is not actually manufacturing.*

*Held*, that a general trade-mark obtained by a company covers not only the articles manufactured and sold by it at the time of the registration of such trade-mark but also all articles which would come within the scope of its charter, and that it might at any future time manufacture and sell.

2. that although the objecting party at the time of proceedings taken herein had not manufactured and sold washing machines, etc., yet, as it was entitled under its charter to enter upon this line of business, no other company or individual would be entitled to register the same mark to be used as a specific trade-mark in connection with the manufacture of such articles.

PETITION of petitioners claiming to be proprietor of a specific trade-mark "Community" and asking for an order entitling it to register the same as a specific trade-mark.

June 23rd, 1922.

Case now heard before the President at Ottawa.

*Russel S. Smart* for petitioner;

*W. L. Scott, K.C.* for objecting party.

The facts and questions of law involved in this case are stated in the reasons for judgment.

THE PRESIDENT, now (December 27th, 1922), delivered judgment.

The Home Appliances Manufacturing Company, Limited, of the city of Winnipeg, claim to be the proprietor of a specific trade-mark which has been used by it in connection with the manufacture and sale of washing machines, washing machine wringers and other washing machine equipment, which consists of the word "Com-

munity." The petitioner applied to have its trade-mark registered but its application was refused by the Commissioner of Patents on the ground of the existence, on the register, of a general trade-mark registered on the 6th day of November, 1908, by Oneida Community, Limited, of Kenwood, N.Y., U.S.A.

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The Oneida Community, Limited, is a very well known manufacturing and trading company incorporated under the laws of the State of New York. Counsel for the petitioner and for the objecting party have agreed upon certain facts and the admissions have been signed and filed in Court.

It is conceded that the business of the Oneida Community, Limited, has been widely extended from year to year and now has assumed a volume of business per annum amounting to a very large sum of money. Enormous sums of money have been spent in advertising their business.

The trade-mark of the objecting party is a general trade-mark of the word "Community." In the case of *Gebr Noelle's* (1) I have endeavoured to express my views as to the distinction to be drawn between a general trade-mark and a specific trade-mark under our Statutes. There is no object in repeating what I have stated.

The perseverance and industry of the counsel who conducted this case have deluged me with a list of authorities and, while I have read a good many of them, I see but little use in referring to most of them. Once the principle is established it comes to be a question of the application of the facts in each particular case.

The charter of the Oneida Community, Limited, is produced and while it may not be very clear, still I think the class of business carried on by the petitioner would be within the scope of the business of the objecting party. The petitioner was incorporated on the 1st June, 1920. It did not actually commence to carry on business until June, 1921. It was notified, on the 14th May, 1921, before any of the petitioner company's goods had been placed upon the market, that the objectors objected to the use of the

(1) [1913] 14 Ex. C.R. 499.

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word "Community" and the objectors required the petitioner to abandon its intention of making use of the word "Community" in its business. There is no reason why the petitioner should have adopted this particular name for its trade-mark. It appears as if the object of the petitioner was to gain some benefit from the market created by the objector's company at enormous expense.

I cannot accede to the argument that because the objectors had not been making the goods claimed to be manufactured by the petitioner, that therefore the petitioner had the right to come in and claim a specific trade-mark in respect of the manufacture of such goods.

The application of petitioner to register the word "Community" as a specific trade-mark was refused.

*Judgment accordingly.*

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