

1982

# Alex George et al v. H. S. Peterson et al : Brief of Appellant

Utah Supreme Court

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## Recommended Citation

Brief of Appellant, *George v. Peterson*, No. 18285 (Utah Supreme Court, 1982).

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IN THE SUPREME COURT OF THE STATE OF UTAH

ALEX GEORGE, d/b/a )  
HIGH COUNTRY CLUB, )  
 )  
Plaintiff and )  
Appellant, )  
 )  
v. )  
 )  
H. S. PETERSON, d/b/a )  
HIGH COUNTRY INN RESTAURANT, )  
d/b/a PETERSON REALTY COMPANY, )  
 )  
Defendant and )  
Respondent. )  
 )  
----- )

CASE NO. 18285

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BRIEF OF APPELLANT  
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Appeal from the Decision of the  
Second Judicial District Court of  
Weber County, State of Utah

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HONORABLE CALVIN GOULD  
DISTRICT COURT JUDGE  
-----

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FILED

JUN - 2 1982

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d/b/a PETERSON REALTY COMPANY, )  
 )  
Defendant and )  
Respondent. )  
 )  
----- )

CASE NO. 18285

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STATEMENT OF THE KIND CASE

This was an action brought by the Appellant for the infringement of the trade name of High Country Club, wherein Appellant was conducting a club and restaurant operation, which was duly licensed and a certificate issued by the Secretary of State as a d/b/a in 1977.

The trade name was infringed upon by the Respondent, through his use of the name High Country Inn Restaurant in a restaurant business located closely adjacent to that of the Appellant.

### DISPOSITION IN THE LOWER COURT

The District Court, in the decision rendered February 3, 1982, held that the plaintiff was not entitled to any protection of his trade name, and had failed in his burden of proof, and dismissed the Complaint, awarding costs to the Respondent. (R 44)

### RELIEF SOUGHT ON APPEAL

The Appellant seeks reversal of the Court's decision, and finding of no cause of action, and requests that the Court reverse and grant damages in the amount prayed for in the Complaint of the Appellant, and a permanent injunction against further use of the name by Respondent due to the unauthorized use of Plaintiff and Appellant's trade name, or one deceptively similar, by Respondent.

### STATEMENT OF THE FACTS

Appellant filed an Application for reservation of a fictitious name or d/b/a for the purpose of doing business on January 7, 1977. Subsequently the name was accepted by the State of Utah and registered for his exclusive use, as "High Country Club". A Certificate for doing business under an assumed name was, as a result, issued by the Lt. Governor/Secretary of State dated January 7, 1977 to the

Appellant. The business was immediately thereafter opened and operated and did continued to do business as a tavern and restaurant business in the Northeastern part of Weber County, State of Utah.

The Respondent, with full knowledge of the operation of the business, the manager being intimately acquainted with the Appellant, and Appellant's use of the name of High Country Club, commenced the construction of a business and the operation of an inn and later a restaurant business in 1980, in the same area in Weber County, State of Utah, and did solicit business and trade from the same clientele, which was primarily residents of the surrounding area and the same approximate location in Northeastern Weber County. Both did particularly rely upon trade from the I.R.S. and D.D.O. establishments for their business, both being in the same proximity to West Twelfth Street in Ogden, Utah; and did rely upon these employees and other commercial industries operating in the same area of Weber County.

The location of the places of business of the two parties involved was that of the Appellant, located at 772 Wall Avenue, in Ogden, Weber County, State of Utah, and the place of the Respondent's business being at 1307 West Twelfth Street in Ogden, Weber County, State of Utah.



Both the Appellant and Respondent operate restaurant businesses catering to the general public and offering group and banquet dining facilities and food services, as well as those for individuals or small groups.

That the Respondent, as a result of the opening of the Restaurant and Inn by the Respondent, some three (3) years following the opening of Appellant's operation for the same purpose, has created a loss of trade, loss of business and profits, and confusion in the trade of the Appellant, by the offering of the sale of food and beverages by two businesses operating in the same general area and catering to the same general trade, and by the Respondent intentionally using the name of one similar in nature to that of the Appellant.

Despite the objection and notice of the objection to the Respondent, that the Respondent cease and desist from using a name similar to that of the Appellant, the Respondent continued to use the name, and is continuing to do so to this date.

ARGUMENT

POINT I.

A BUSINESS ENTITY, WHICH HAS BUILT UP BUSINESS AND CLIENTELE UNDER ITS NAME, WHICH INCLUDES A DESCRIPTIVE GEOGRAPHICAL TERM, IS ENTITLED TO ENJOIN A NEW COMPANY FROM ENGAGING IN THE SAME BUSINESS IN THE SAME LOCALITY UNDER A NAME SO SIMILAR THAT REASONABLY INTELLIGENT AND CAREFUL CUSTOMERS WILL NATURALLY BE MISLED, AND IT IS NOT NECESSARY THAT AN INTENT TO DEFRAUD SHALL EXIST.

In the case of Kansas Milling Company v. Kansas Flour Mills Company, 133 P.2d, 542, the Court found specifically that:

There seems to be a conflict of authority as to whether, in order that the use of a geographical name may be enjoined on the ground of unfair competition, an actual intention to defraud must be shown. . . Doubtless in many particular instances an injunction might well be awarded or refused according to whether an intentional wrong has been done. But we do not think it should be said broadly that proof of intentional fraud is essential to the granting of such relief. While the existence of a wrongful intent might justify the interference of a court of equity upon a less showing of injury than would otherwise be required, the absence of such specific intent ought not to stay the hand of the court where a name is adopted so similar to that already in use by a business rival that injury to the first user will obviously and inevitably result.

Thus, it is obvious that there is no requisite of proof of fraud or wrongful intent in order to have the use of an identical or similar name enjoined by a junior appropriator.

And in the instant case, the decision by the trial court that there was no proof to entitle Appellant to relief is obviously erroneous in view of the reasoning of the above cited case. Particularly, where the business name of the Respondent is so similar to that of the Appellant as to likely deceive a person of ordinary intelligence, in the exercise of usual care in dealing with the Respondent. The Court in Kansas Milling, supra, went on to say that:

The degree to which the similarity of names will naturally tend to deceive a reasonably intelligent and careful person is undoubtedly the vital question on which the controversy turns. That question, however, is essentially one of law rather than fact. It cannot be conclusively determined by evidence of whether confusion has or has not resulted, just as the actual conduct of individuals is not proof of what constitutes reasonable diligence.

The Court, in viewing the methods for determining just such a question, referred to Nims on Unfair Business Competition, who, in turn, referred to a rule of the House of Lords, which expressly states:

That no witness is entitled to express an opinion as to this. The names may be put in evidence, together with the facts as to their use, and the circumstances surrounding the choosing of them; but there is no standard, except what the court in each particular case believes has worked fraud, or may work fraud or loss to the plaintiff. The probability of injury resulting from the use of the two names is the test to be applied by

the court for the purpose of deciding whether or not the names will conflict.

The actual fact of injury is amply demonstrated in the instant case by the numerous calls received by the Appellant attempting to set up banquets in which food was prepared, but at which no parties ever appeared, and the food was left unused and had to be thrown away. (R. 88-92) The Court went on further to note that:

A distinction must be recognized between different geographical terms, according to their descriptive quality, the desirability of their use, and their connection with the subject to which they are applied. . . . If the defendant had imitated the plaintiff's brands, or taken other steps likely to increase the confusion between the two names, relief could be granted.

In the instant case, the Respondent has sought not only to appropriate a similar, if not identical name, but has also sought to copy the very symbols on the signs which are used by the Appellant, which further adds to and increases the confusion.

In Northwestern Knitting Company v. Garon, 112 Minn. 321, 128 N.W. 288, the operation of the Northwestern Knitting Mill, supra, located at Duluth was enjoined because of interference with the business of the Northwestern Knitting Company, Minneapolis. Even though the use of the word "Northwestern" like that of "World" "Sun" or "American" is

so indefinite, that its use could readily be applied in many sections of the country, if not the world.

In Cady v. Schultz, 19 R.I. 193, 32 A.915, the prior user of the words "United States" as a part of the style of a dental office was protected by injunction against their similar use by a competitor, even though the phrase was so broad that it clearly was not descriptive in any normal sense. The Minnesota Supreme Court in Richard v. Caton College, 88 Minn. 242, 92 N.W. 958, forbade a new institution having another and entirely different name, to describe itself in its advertising matter as Minnesota School of Business, the court feeling that this, in fact, imitated the name of an older school known as the "Minnesota School of Business".

In the instant case, the use of the term High Country Inn, not only is deceptively similar to Appellant's use of the name High Country Club, but both parties also seek to use the name restaurant after their respective appellations, which without doubt, leads to confusion and loss of business and customers.

In the case of Phillips v. The Governor & Company of Adventurers of England Trading Into Hudson's Bay, 79 F.2d, 971, the Respondent attempted to deny Appellant's cause of action because of the fact that Hudson's Bay had a geograph-

ical denotation and was therefore not entitled to exclusive use, and for that reason there could be no unfair competition. However, the Court in that case referred to the case of Elgin National Watch Company v. Illinois Watch Case Company, 1979 U.S. 665, which held:

In other words, the manufacturer of particular goods is entitled to the reputation they have acquired, and the public is entitled to the means of distinguishing between those and other goods; and protection is accorded against unfair dealing, whether there be a technical trademark or not. The essence of the wrong consists in the sale of the goods of one manufacturer or vendor for those of another.

The parties in that case both sought to name their product after the particular city in which they are manufactured, and the Court did hold that the prior appropriator was entitled to protection against subsequent appropriation of that name, stating:

It abundantly appears that plaintiff's name has acquired a secondary significance in the kind and quality of its goods, and therefore it has no objection to the issuance of an injunction that its name is geographical.

The Respondent, in the Philips case, also sought to distinguish the use of Hudson's Bay as a mere descriptive term, stating that there were cities named Hudson, Hudson Falls, the Hudson River, a car, different types of fur, which bore the name Hudson Bay, but the Court replied:

Where such words or names, by long use, have become identified in the minds of the public with the goods or business of a particular trader, it is unfair competition for a subsequent trader to use them in connection with similar goods or business in such a manner as to deceive the public and pass off his goods or business for that of his rival.

Appellant had, for a long time, operated a private club and developed a certain class and group of customers and clientele in which the name High Country Club had become identified and the type of food which he served, which was a Greek specialty, separate and apart from that of any normal restaurant. The Court, in Philips, supra, held that there was more than sufficient grounds to grant relief to the Appellant stating that:

With respect to this contention it is sufficient to say that since Respondent's assumed name has been identified in the minds of the public with the business of plaintiff, the fact that the name is descriptive will not prevent the relief asked.

Here there appears to be a duration of three years time in which the Appellant had operated a restaurant business and which the public had come to identify the name High Country Club with the particular type of food served by the Appellant, and it had developed to the point where groups from the Internal Revenue Service and Defense Depot of Ogden had, on a regular basis, set up banquets and awards cere-

monies at his place of business because of their appreciation of the particular type of food which is served there.

In the Philips case, the Court found that the law, with respect to trade names, permits a more liberal application of a remedy by injunction in cases of unfair competition, than does the law in cases involving infringement of trademarks, and any strict rules or reasoning to be applied in cases strictly involving trademarks are not persuasive here. The Court states:

We are not here called upon to determine the validity of a trademark, but only whether or not there is unfair competition in the use of trade names.

In the case of Continental Paper & Bag Corporation v. Jacksonville Paper Company 165 S. 216, the Court held that there were numerous exceptions to any rule regarding exclusive use of a geographical name, particularly where such designation was arbitrarily or fancifully created, and where the name has acquired a secondary meaning and signify the monuments. The Court, in that case, expresses its reasoning as follows:

But where the manufacturer or dealer has adopted and acquired the right to use, as a trade name, a combination of words which indicates his place of business and also is descriptive of his product, if another, although engaged in the same line of business in the same town, and having the right to use the same words to indicate his location and the nature



of his business, thereafter combines such words into a trade name for himself which is, in form, so nearly like that previously adopted by his competitor as to mislead the public, it constitutes unfair competition. While his competitor cannot acquired the exclusive right to use the name of the town in which both do business, nor the exclusive right to use the descriptive words ordinarily used to indicate the nature of such business, yet, if the one second in point of time desires to incorporate such words in his own trade name, he must use them in such form, or combine them with other words in such manner, that his trade name will be fairly distinguishable from that of his competitor. He is not permitted to simulate the prior trade name to such an extent that purchasers will be led to deal with him under the belief that they are dealing with his competitor.

This reasoning is directly on point with the facts of the instant case, in that the simulation of Appellant's trade name has led to confusion on the part of customers that are, in fact, dealing with the Appellant, when they are, in fact, dealing with the Respondent, High Country Inn Restaurant. Or they call up and place orders with Appellant's High Country Club for banquets and ceremonies, when, in fact, it is their desire to arrange for such a meeting at the Respondent's High County Inn Restaurant's banquet center.

Thus, it can be seen that strict or technical interpretations with regard to geographical names which may be

applied to trademark are not, in fact, applicable to trade names. This is particularly true for customers who are used to dealing with the prior appropriator of the name and are, in fact, confused and led to deal mistakenly with the junior appropriator, causing loss of business and making it difficult for the prior appropriator to advertise or, in fact, continue his business with any degree of profitability.

Thus, it appears the decision of the lower Court was clearly erroneous in its application of law, and in any reliance upon the memorandum of Respondent, which cites no case authority whatsoever in support of his position, and is, in fact, contrary to the large body of case authority relating to use of trade names in unfair competition as defined by the common law of this country.

## POINT II.

THE COURTS HAVE RECOGNIZED THAT DIVERSION OF TRADE AND LOSS OF SALES, IN ADDITION TO DAMAGE TO REPUTATION AND GOOD WILL, EXPANSION OF BUSINESS AND DILUTION OF TRADE NAME AMOUNTS TO UNJUST ENRICHMENT AND IS THE BASIS FOR DAMAGES AND INJUNCTION AS APPROPRIATE RELIEF.

The courts have long ago adopted a broad rule of protection for the mark or name of a business which is in any way distinctive, arbitrary, strange, fanciful, original or otherwise, when there are competing parties adopting the

same name. Sweet 16 Company v. Sweet 16 Shop, Inc., (CA8 Utah) 15 F.2d 920. The rationale upon which the courts have allowed a cause of action for use of another parties trade name is predicated upon the fact that the use by the infringer results in a confusion of source on the part of the customers perspective or actual. Chemical Corp. of America v. Anheuser-Busch, Inc., (CA5 Fla) 306 F.2d 433. This confusion is readily apparent in the instant case and was testified to at great length by Mr. Alex George at the time of trial. Reference was made to a number of large banquets involving many thousands of dollars in expense in food preparation, which never materialized due to the confusion and similarity of the names. (R 88-92)

The relief granted by courts for infringement of a trade name has included injunctive relief, particularly where the products are related and merchandized through the same channels, and confusion is likely or inevitable. The courts have recognized that another party using a trade name of one who has registered the name with the state creates an impression that the registered party has sponsored or approved, or is in some way connected with the activities of the one infringing that name, or that the latter is affiliated with or a part or branch of the former.

A junior appropriator of another's trade name must in fact demonstrate to the court that the appropriator's use may be entirely too remote to occasion any conceivable injury, or that the mark is nondescript so as to dilute its selling power, or that the second user has used a mark for many years and developed a good will of his own before any conflict occurs, and in addition that there be an honest commercial need for his use of the term. One of the major concerns of the courts has been that the one who has first obtained approval from the state to use a registered name, should be permitted to develop his present business free from any stain or tarnishment, which may result from improper trade practices of the junior user. Avon Shoe Company v. David Crystal, Inc., (CA2 NY) 279 F.2d 607.

In this case, there was testimony from Mr. George that in fact many deliveries of inventory and other goods were made to his establishment due to the confusion in the names, and it may very well result in the future that failure to pay for any goods or inventory on the part of High Country Inn would become a blot on the credit and goodwill of High Country Club and Restaurant, and damage result therefrom. (R 85-86)

In addition, the courts have awarded damages based upon injury to the complaining party's reputation and goodwill,

the necessary limitation on the normal expansion of his business, or the whittling away or dilution of a trade name, resulting in unjust enrichment to the unlawful appropriater. Dwinell-Wright Co. v. White House Milk Co., (CA2 NY) 132 F.2d 822.

Another theory of relief is that of giving a false impression of a trade connection between the parties, possibly subjecting the first appropriator to liability or to the embarrassment of litigation. This may result in damage to the registered parties credit reputation, and the possible risk of defending suits, which were in fact intended to be brought against the other appropriator. Great Atlantic & Pacific Tea Co. v. A. & P. Radio Stores, (DC Pa) 20 F.Supp. 703. In fact, one widely expressed view is that there should be no absolute distinction between coined and colloquial names in use, but that the only issue is whether the defendant's use of the complaining party's mark, name or symbols result in a confusion as to the source or origin of the goods or services involved.

The right of an owner of a trade name to complain of the use thereof by another is ordinarily dependent upon the existence of some similarity, connection or relation between the goods, services or businesses involved, and with respect to their kind or character. In this case, the Appellant,

Alex George, had opened and operated a private club, which necessarily by state law requires the offering of food and restaurant facilities in addition to the serving of liquor in the year 1977, immediately following the issuance of a certificate by the Secretary of State's Office. It is obvious from the testimony that he did continue to operate a business, a major portion of which was the preparation and sale of food to customers, particularly employees of the Internal Revenue Service and the Defense Depot of Ogden, and that the Respondent, High Country Inn, was at all times aware of that fact. (R 159-162)

Some courts have discussed the requirement of bad faith on the part of the subsequent appropriator, and in fact, a fraudulent intention or bad faith has been inferred where the junior appropriator has knowledge of the complaining parties trade name and symbols, and nevertheless deliberately copies or imitates such mark, name or symbols. Aunt Jemima Mills Co. v. Rigney & Co., (CA2) 247 F.407. In this case, there is ample testimony to the effect that the trade name and type of business conducted by High Country Inn and Restaurant is in fact identical, and that exhibits which are in the records, specifically show that the names and signs are quite similar, if not, in fact, identical. Additionally, the courts have found that the innocent adoption by a

junior user of the party's trademark is no defense, if such user has been guilty of progressive encroachment upon the rights of the senior user. Independent Nail & Packing Co. v. Stronghold Screw Products, Inc., (CA7 Ill) 205 F.2d 921.

In this case, the evidence and testimony regarding confusion on the part of clientele to which both of the establishments cater, demonstrates an increasing encroachment upon the business of the High Country Club, particularly with regard to the employees of Defense Depot of Ogden and Internal Revenue Services who were the principal customers of the High Country Club in the past, and who had on occasion mistakenly called and set up banquets with the High Country Inn and Restaurant, when in reality what they were seeking to do was to arrange the same banquet with the High Country Club.

It has been suggested that at least in the absence of Legislation to the contrary, state lines delimit the extent of trade name protection as an appropriate division of trade territory. In the common law of each state it has been presumed to be true that if a name has been used and given a reputation, the fact that no business has been done in a particular city is immaterial, particularly where a state statute provided for the registration of trade names. Socony-Vacuum Oil Co. v. Oil City Refiners, (CA6 Ohio) 136



F.2d 470. In this case, the damage is even more apparent because of the fact that the parties are operating in close proximity to each other within the boundaries of a small city, and depend for the most part upon the same clientele, specifically government employees.

A major case dealing with infringement of trade names was one which was decided by the District Court for the District of Utah in 1926. Sweet Sixteen Company v. Sweet 16 Shop, Inc., supra. In that case the facts are quite similar to those of the present case with regard to the use of a registered name, in that one business was named Sweet Sixteen Company, while the other was named Sweet 16 Shop, Inc. And in the present case the names are also substantially similar or identical, one being High Country Club and the being the High Country Inn, both now adding restaurant after the name to denote dining facilities. Also, in that case, suit was brought for infringement of the plaintiff's trade name, and the trial court finding for the defendant was reversed by the court of appeals. The sole question presented upon appeal, was the same as that found in the present case, where "the facts shown by the evidence are practically undisputed, the plaintiff was entitled to the relief prayed for".



The Court looked at the facts and evidence before it, and held:

Mere inspection and pronunciation discloses that the names of plaintiff and defendant are so similar as to speak infringement if (a) plaintiff, the conceded prior user of the mark and name involved, and defendant, when defendant set up its business came into actual competition in the same field or territory of trade, or (b) if defendant, when it began business, knowingly assumed plaintiff's name and mark in a contiguous field of trade or territory into which plaintiff had already penetrated with its trade to an extent, and into which plaintiff must soon go extensively by the natural expansion of its business.

The facts of the two cases are also substantially similar, in that the plaintiff in Sweet Sixteen Co. case had previously begun operation, although not on the scale eventually contemplated before anything was commenced by the defendant, and when defendant did apply to the Secretary of State for the use of the name Sweet 16, a letter was sent to them advising them of the exclusive right to use of that name by Sweet Sixteen Company of San Francisco, due to its prior dealings within the state. Likewise, Mr. Alex George had begun business prior to any contemplated establishment by the Respondent, and in fact was in the process of expanding that business when the Respondent came upon the scene. Respondent was likewise advised by letter in August,

1980, of the prior right to the use of the name by Mr. George, but Respondent chose to ignore that fact, and continued with its business. Also, the record in both cases discloses fairly numerous instances where customers and potential customers were misled by the similarity of names in mistaking the Respondent's business for that of the Appellant. The Court held in Sweet Sixteen:

The essence of the wrong consists in the sale or mistaking of the goods of one dealer or manufacturer for those of another, and that this was an essential element in both classes of cases. In fact the common law of trademark is but a part of the broader law of unfair competition.

The Court also refers to the case of United Drug Co. v. Theodore Rectanus Co., 39 S.Ct. 48, which held that:

Undoubtedly the general rule is that, as between conflicting claimants to the right to use the same mark the fact prior appropriation determines the question.

The rationale was that purchasers had come to understand the mark as indicating the origin of what was being sold, so that use by a second producer amounts to an attempt by the second to sell his goods as those of his competitor. In this case, Respondent has seen fit to adopt an almost identical type of sign which comes close if it is not, in fact, an actual trademark, even though executive officers were aware of the existence of Appellant's High Country Club

and the signs used in promoting its business, which would indicate that they were not wholly innocent of Appellant's existence, and its use of the name and mark in controversy, bringing into effect the reasoning of the Sweet Sixteen case.

But even more than in the Sweet Sixteen case, the Appellant in the present case has been engaged in business and purposeful activity since his obtaining of the d/b/a from the Secretary of State in 1977. In addition, the Appellant has sought to advertise, but because of the confusion of the names used by the parties, is at this point, effectively denied the use of the advertising media.

(R 109-110)

In the words of the court in Sweet Sixteen:

Where the name or device chosen is fanciful or distinctive it may become a technical trademark and very slight use will, in addition to adoption, create a trademark.

(Citing from Nims, Law of Unfair Competition and Trademarks, p. 415)

And quoting again from Sweet Sixteen:

If, however, the courts of a particular government can with respect to the subject in hand, take cognizance only of wrongs committed within the geographical boundaries of the country, it is still not necessary, in our judgment, that a trade in an article should be fully established, in the sense that the

article be widely known, before the proprietor of its trademark or trade name may be entitled to the protection of courts of equity for the preservation of his rights.

It is further stated:

A proprietor is entitled to protection from the time of commencing the user of the trademark.

Thus, the prior and continued use and registration by the High Country Club of the name and trademark on its sign was notice to the subsequent appropriators of the name and mark of its use and the unauthorized taking over, which was in bad faith is therefore compensable through the award of damages and also a court acting in equity, should enjoin such conduct as being a wrong not countenanced by the law.

It should be noted that the Legislature of the State of Utah has specifically acted to attempt to remedy such wrongful appropriation of names by subsequent users by providing in 42-2-6.5 of the Utah Code (1):

The Secretary of State shall not accept a certificate for filing if the assumed name therein is the same as or deceptively similar to the name of any corporation authorized to do business in this state, a name which is reserved or registered in this state pursuant to statute, the name of a trademark or service mark registered with the Secretary, or an assumed name which is filed and on the active list.

Obviously the Legislature is attempting to prevent the very circumstances which occurred in the instant case, but apparently the leaving of the matter of accepting names to the discretion of clerical staff is not a sufficient safeguard, and remedy must be had through the courts to prevent the wrongful appropriation, as is evidenced by this case.

Therefore, Appellant is well within the authority of the case law in requesting that he be awarded damages for the injuries he has suffered, and a permanent injunction against further use by the wrongful appropriator, as was done in the Sweet Sixteen case, wherein the court reversed and remanded with directions to grant to plaintiff the relief for which it had prayed.

#### CONCLUSION

The wrongful appropriation by a subsequent user of a name deceptively similar to one already in use and in close proximity to the prior appropriator, should be enjoined and damages awarded in accordance with widely recognized case law dealing with the subject, and the Appellant should be granted free and exclusive use of the name which he has

properly registered and attempted to preserve through  
exercise of his rights according to the laws of this State.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of June, 1982.

VLAHOS, PERKINS & SHARP



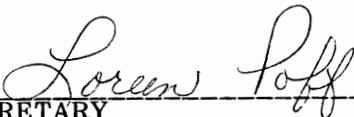
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1<sup>st</sup> day of June, 1982,  
I mailed a true and correct copy of the above and foregoing  
Brief of Appellant, by placing same in the United States  
Mail, postage prepaid and addressed to the following:

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SECRETARY