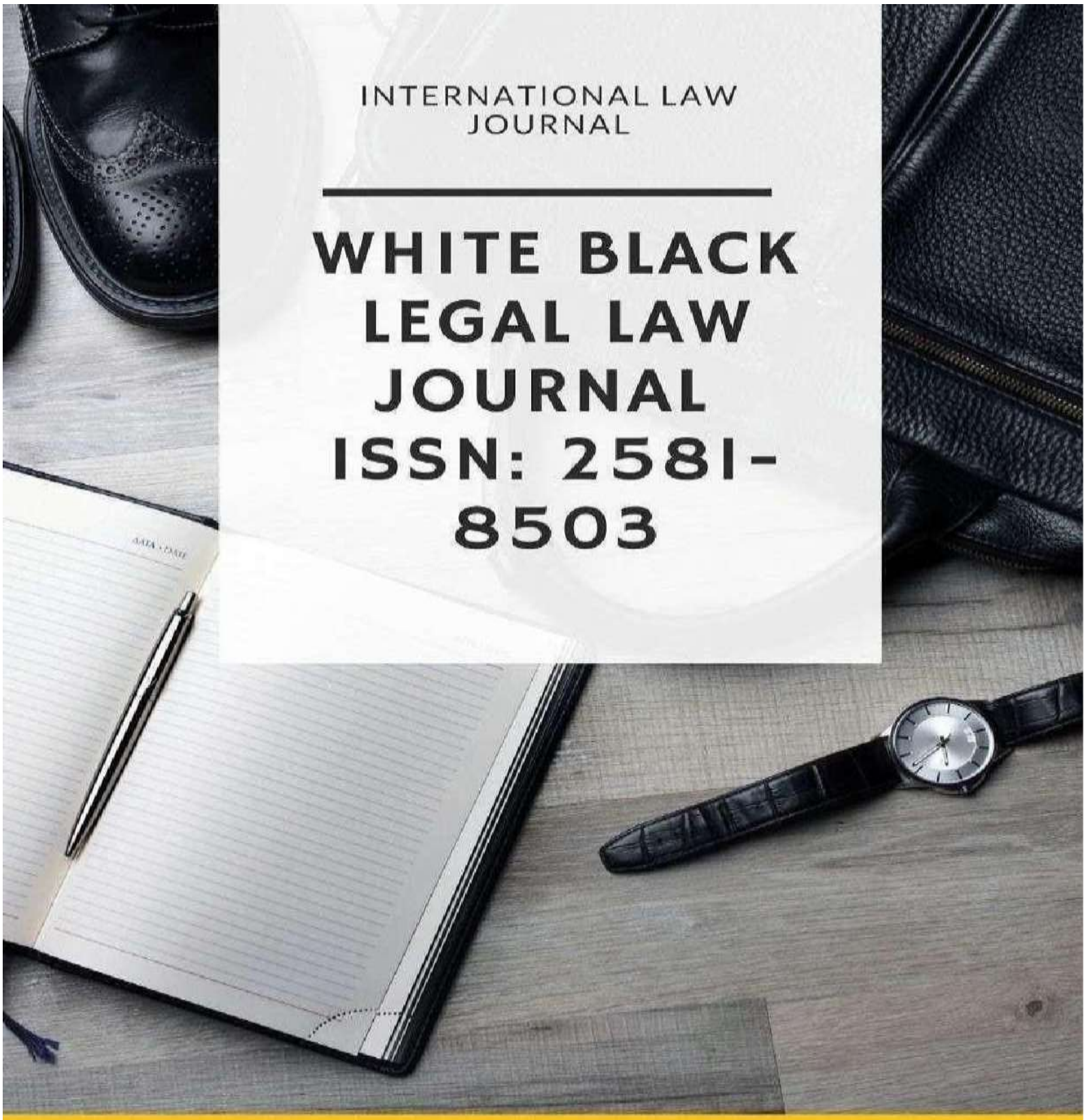

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

Brown Chemical Co. Vs Meyer, 1891

"Surnames Cannot Be Trademarked, But Neither Can They Be Used to Delude the Public"

Authored By- Adv. Neha Irene Saluja

The suit was instituted by Brown Chemical Co. against Meyer Brothers & Co. in the State of Missouri. The suit was instituted to restrain an unfair competition in trade.

Facts Of The Case

The plaintiff was occupied in the concoction of a certain medicine, which had attained a high reputation as a remedy for the prevention and cure of numerous diseases. The label comprised of four panels, the front one, bore the depiction of a lion's head, over which the word "Brown's was printed;" in the mouth of the lion. The poster was bearing the words "Iron Bitters," printed in ginormous, conspicuous letters, and distinguished by a circular design occupying the central field of the banner. The words "Brown's Iron Bitters was also printed on the three remaining panels," in different places, and were ordered as shown in the label.

The plaintiff alleged that the defendant was selling his medicines in the bottles containing label – "Browns" Iron Tonic. The allegations were retracted by the defendant in relation to the fraudulent intent. The defendant shredded some light on his facts stating that his preparation is distinct from Brown's Iron Bitters and there was no intent of emulating plaintiff's preparation. Brown sold out his interest in said preparation to Lincoln, who has been putting up said medicine, and presenting it to the public in cartons and bottles, utterly different in colour, size, and appearance from plaintiff's bottles, and with labels affixed to the bottles entirely different in colour, size, appearance, and the details from plaintiff's labels, and enclosed in wrappers very dissimilar from
the cartons of Brown's iron bitters, so that the public could not be deluded or the plaintiff discredited.

What Was The Opinion Of Justice?

An ordinary surname cannot be expropriated as a trade-mark by any one person as against others of the coequal name, who are using it for a legit purpose; although cases are not wanting of injunctions issued to hold back the use even of one's own name where a fraud upon another is evidently intended, or where he has assigned or dissociated with his right to use it.

The divergence between the lawful and the unlawful use of one's own name is illustrated in the case of **Croft v. Day**

Deceitful Intent, Essence Of Infringement

Case – Croft v Day

The descendent of Day and Martin, pioneer of the famous blacking, filed a bill to enjoin the defendant Day, a nephew of the elder Day, who had started business as a blacking maker, and was using a label of the identical size & colour with the letters aligned precisely the same and with the same name, 'Day and Martin,' on the boxes. The defendant was enjoined, the court placing its judgement, not upon any exclusive or peculiar right that the plaintiff had to exert the name of Day and Martin, but upon the fact of the defendant using the names with certain circumstances, and in a way calculated to deceive the public.

Observation Of The Court

The defendant has a right to commence the business of a blacking manufacturer legitimately and impartially. He has a right to the use of his own name.

Case - Holloway v. Holloway

Thomas Holloway had for many years made and sold ointments and pills under the label 'Holloway's Pills and Ointments.' His brother Henry Holloway eventually manufactured ointment and pills with the same designation. The pillboxes and pots (of ointment) of the latter were alike in form to, and were proven to have been replicated from, those of the former. The master of the rolls in granting the injunction said- 'The defendant's name being Holloway, he has a right to represent himself as a vendor of Holloway's pills and ointment. But he has no right to do so with such modifications or additions to his own name as to deceive the public, and make them conjecture that he is selling the plaintiff's pills and ointments. The evidence in this case legibly proves that pills and ointments have been sold by the defendant, marked in such a way that persons have purchased them of the defendant, assuming that they were buying goods of the plaintiff.'

Applicability

These cases apply only where the defendant adds to his own name to counterfeit that of the plaintiff's labels, boxes, or packages, and thereby persuades the public to believe that his goods are those of the plaintiff. A man's name is his own property, and his right to its usage and enjoyment as he has to that of any other species of property. If such use be a rational, sincere, and fair exercise of such right, he is no more accountable for the incidental damage.

The words are not in themselves a trademark, they are not made a monopoly simply by the adding the proprietor's name, provided that the defendant be legally entitled to make use of the same name as associated with his preparations.

How Are The Two Preparations Different?

In this case, the usual *indicia* of fraud are missing. Not only do defendants' bottles differ in shape & size from those of the plaintiff, but their labels and cartons are so unrelated in design, colour and detail that no perspicacious person would be likely to purchase either under the impression that he

was purchasing the other. There are certain resemblances in the instructions & prescriptions for the use of the respective preparations, but no greater than would be naturally expected in two medicinal compounds, the general object of which is the same.

Scope Of Similar Advertisement In Escaping Liability

The resemblance in the advertising cards or posters are unquestionably much greater, both being a deep yellow in colour, with an positioning and shape of letters closely approaching identity, and, if this similarity had been carried into the labels, we should have contemplated it as strong evidence of a fraudulent intent; but as it turn up from the testimony that the use of these posters has been relinquished, and that the defendants in this case never employed them or persuaded, or approved others to do so, it is clear that as against these defendants the court cannot now be properly called upon to enjoin them.

Relevance Of Testimonies

The testimony of a number of druggists carrying on business at Little Rock connotes that the two preparations are known to the trade and purchasers as separate & distinct and that one is never mistaken for the other. That the plaintiff itself did not consider that Lincoln & Co. we're infringing upon its rights.

Established Communication Between The Defendant And Plaintiff

On August 21, 1882 plaintiff, wrote to the defendants that they have noticed that defendants are manufacturing a Brown's iron tonic and asked them that whether it was a new medicine? And they are trespassing plaintiffs' rights. Lincoln & Co. replied, that they had begun the manufacture of the iron tonic since the admission of Mr. E. L. Brown into their firm, on May, 1881, they also enclosed the plaintiff a bottle of the preparation, and assured them that they had no proclivity to make money upon their reputation, and had never attempted to sell their tonic as that of the plaintiff's.

Plaintiff thanked them for their kind and satisfactory letter. They convey their wish to Brown's iron tonic a success. Plaintiff accepted that while examination, they cannot see where it conflicts? except in the multiplicity of the Brown family.

It Was HELD

That in the absence of testimony tending to exhibit an intention to palm off their preparation as that of the plaintiff, the defendants have a right to use.

Brown's right to use his own name as connected with the manufacture of the iron tonic, he could not shift such right to a person of different name, and thereby approved the latter to make use of it. The plaintiff does not stand in a place to question the right of Brown to pass on his interest in the business, and to include in such transfer the right to the use of his name in relation with the preparation of the tonic, as part of the goodwill of the business. The decree of the court was affirmed.

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