Unfair Competition—Recognition of Property Right in Ideas and Methods

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ought to have seen the plaintiff approaching a position of imminent peril, and regardless of whether plaintiff was oblivious. If carried to the extreme, the practical effect of this ruling will be to force the trains to "stop, look and listen" for approaching autos.

A. K. S.

UNFAIR COMPETITION—RECOGNITION OF PROPERTY RIGHT IN IDEAS AND METHODS—[Federal].—The plaintiff had originated the advertising plan "Bank Night," and had expended money and effort in its promotion, deriving profit by licensing its use. The defendant was engaged in licensing a similar scheme. The plaintiff sued to restrain defendant from unfair competition in appropriating its alleged property right in the system. The bill was dismissed on the grounds that to sustain the bill would result in a monopoly and that plaintiff's property right in the system was lost when disclosed to the public.

The courts have found the extent of protection to be accorded this type of business scheme an extremely perplexing problem. While recognition of property rights in economically valuable ideas and methods has frequently been sought, courts have been reluctant to extend such recognition. The early common law was in conflict as to property in purely intellectual creations. However a "reduction to practice" of an idea is apparently

1. The plaintiff licensed or vended the plan to commercial establishments, especially motion picture theatres. The plan involved the award of a prize at stated periods to the patron or person whose name was drawn from a receptacle in which the names or serial numbers of all patrons or registered persons were contained. The lower court's dismissal of the bill on the ground that the plan was a gambling transaction was held erroneous on this appeal. This comment is not concerned with the legality of the system. See comment, 22 WASHINGTON U. LAW QUARTERLY 126 (1936).

2. Affiliated Enterprises, Inc., v. Truber et al., 86 F. (2d) 958 (C. C. A. 1, 1936). The plaintiff also alleged infringement of its copyrights on its instructions and publications. The allegations of infringement were held insufficient.

3. Handler, Unfair Competition (1936) 21 Iowa L. Rev. 175, 190; note 47 Harv. L. Rev. 1419 (1934).


6. A "reduction to practice" involves the employing of the abstraction in a definite concrete form as a source of profit in business. Note, 47 Harv. L. Rev. 1419 (1934); note, 42 Harv. L. Rev. 258 (1929).
now necessary to create any recognizable interest in it. If literary property before publication is protected as personal property. If not literary property, the courts usually require that the idea be accompanied by particular physical devices for carrying it out, or that it be guarded as a trade secret before protecting against appropriation of any property right therein. Thus courts have sanctioned honest appropriation of formulae, advertising schemes, methods of conducting business, styles, designs.


12. Westminster Laundry Co. v. Hesse Envelope Co., 174 Mo. App. 238, 156 S. W. 767 (1913) (blind advertising scheme); Armstrong Seatag Corp.
and other commercially valuable ideas. Appropriation that is fraudulent, in breach of contract or trust, or that results in passing off one's own goods as those of a competitor has been consistently enjoined. While the existence of such unfair competition strengthens the case for giving protection, the lack of that element should not preclude recognition of any legal right in such ideas.

The case of *International News Service v. Associated Press* has often been cited, as it was by the plaintiff in the instant case, as declaring a new "free ride" theory of unfair competition, viz., that a competitor shall not appropriate the benefits of another's efforts and expenditures. But the court here, as have nearly all courts, declined to apply the principle to types of appropriation other than of news.

14. Montegut v. Hickson, 164 N. Y. Supp. 858 (1917) (relief was given here against appropriation because of the fraudulent means employed in the appropriation).
20. Handler, Unfair Competition (1936) 21 Iowa L. Rev. 175, 190; note, 47 Harv. L. Rev. 1419 (1934).
It is unlikely, however, that the courts will not continue to extend the scope of protection of business ideas.\textsuperscript{22} Plans of action, as here presented, have an exchange value in modern business,\textsuperscript{23} and, as such, deserve recognition and a limited protection.\textsuperscript{24} While there are analogies in the protection afforded the creations of authors, artists, and musicians, the vital public interest in the free use of ideas and freedom from stifling monopoly must be the test. This, however, should be finally applied by the creative force of the legislature.\textsuperscript{25} The instant case is an example of the recognition by a court of judicial limitations and of the weighty considerations of public policy as obstacles to judicial protection of plaintiff's interests.

F. R. K.

\textsuperscript{22} Note, 47 Harv. L. Rev. 1419 (1934).

\textsuperscript{23} See Commons, \textit{Legal Foundations of Capitalism} (1924) c. 2, noting especially pp. 14-18, for a discussion of the development of the exchange value definition of property.

\textsuperscript{24} Comment, 21 Cornell L. Q. 488 (1936).

\textsuperscript{25} See Mr. Justice Holmes' separate opinion and Mr. Justice Cardozo's dissent in the International News Service case, supra, note 19; Handler, \textit{Unfair Competition} (1936) 21 Iowa L. Rev. 175, 195; note, 47 Harv. L. Rev. 1419 (1934).