of Nebraska in an early decision upheld the granting of a writ of habeas corpus to a prisoner who was forcibly abducted into the state,[15] but this decision was overruled in a subsequent case.[16] In *State v. Simmons*[17] the Supreme Court of Kansas upheld the granting of a writ of habeas corpus under the same circumstances. That decision has never been overruled,[18] but a more recent Kansas case referred favorably to the majority rule.[19]

Thus it is well settled that the courts of every jurisdiction of this country, with the possible exception of Kansas, will not grant a writ of habeas corpus to release a person convicted of a crime because he has been forcibly abducted or kidnapped into the jurisdiction.

EQUITY — TRADE NAME PROTECTION — CHARITABLE CORPORATION'S RIGHTS AGAINST A BUSINESS

Plaintiff, the "Golden Slipper Square Club," a non-profit, charitable corporation had presented annual stage shows and dinners since 1924 at which contributions had been solicited in order to finance its various charitable activities. Defendant, a restaurant and night club, adopted the name "Golden Slipper Restaurant and Catering Service, Inc." in 1948 with intent to trade on plaintiff's good name. Plaintiff in the lower court obtained an injunction restraining defendant from further use of its name. On appeal, held: affirmed. A well-established charitable corporation is entitled to injunctive relief against a business corporation adopting a similar name with the intent to trade on the charity's good will and reputation.[1]

It has been generally recognized that a trade name of a business organization will be protected from infringement.[2] At

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15. *In re* Robinson, 29 Neb. 135, 45 N.W. 267 (1890).
16. Jackson v. Olson, 146 Neb. 885, 22 N.W.2d 124 (1946).
17. 39 Kan. 262, 18 Pac. 177 (1888).
18. Nor has the case been followed. The question has never since been raised in Kansas.
19. State v. Wellman, 102 Kan. 503, 170 Pac. 1052 (1918).
1. Golden Slipper Square Club v. Golden Slipper Restaurant and Catering, Inc., 371 Pa. 92, 88 A.2d 734 (1952).
2. A name which is primarily generic or descriptive cannot be appropriated as a technical trade mark or trade name, but it will be afforded protection if it has, through usage, acquired a secondary meaning in the public mind as associated with a certain party or corporation. Safeway Stores, Inc. v. Dunnell, 172 F.2d 649 (9th Cir. 1949); Weatherford v. Eytchison, 90 Cal. App. 2d 379, 202 P.2d 1040 (1949); *see* American Steel Foundries v. Robertson, 269 U.S. 372, 380 (1926).

first, the sole basis for trade name protection was to prevent the "palming off" of one man's goods for those of another,[3] and such relief was afforded only in situations where products were in actual competition.[4] Later this protection was extended to cases where the two businesses, while not exactly alike, were of the same general class.[5] With that step, the basis for relief began to shift from loss of potential customers to the contemporary basis of protection of good-will and reputation,[6] and relief has been granted where there has been little if any competition.[7] Intent to capitalize on plaintiff's good-will by adoption of his name has not been deemed a necessary element of the action,[8] but courts have expressed a willingness to afford relief in doubtful cases more readily where a definite fraudulent intent has been present.[9]

It has been pointed out that non-profit corporations as well as business organizations have an interest in maintaining their identity, general reputation, financial credit, and ability to raise funds.[10] Consistent with that fact, the courts have held under the modern rationale that non-profit organizations are entitled to the same protection of their trade names as is afforded to businesses.[11] Although most of the cases involving non-profit corpora-

3. Borden Ice Cream Co. v. Bordon's Condensed Milk Co., 201 Fed. 510 (7th Cir. 1912); Good Housekeeping Shop v. Smitter, 254 Mich. 592, 236 N.W. 872 (1931); *accord*, Ambassador Hotel Corp. v. Hotel Sherman Company, 226 Ill. App. 247 (1922).

4. *Ibid.*

5. Anheuser-Busch, Inc. v. Budweiser Malt Products Corporation, 295 Fed. 306 (2d Cir. 1923) (beer and malt syrup); American Tobacco Co. v. Polacsek, 170 Fed. 117 (S.D.N.Y. 1909) (cigarettes and pipe tobacco).

6. Akron-Overland Tire Co. v. Willys-Overland Co., 273 Fed. 674 (3d Cir. 1921); Louisville Taxicab & Transfer Co. v. Yellow Cab Transit Co., 53 F. Supp. 272 (W.D. Ky. 1943); Esquire, Inc. v. Esquire Bar, 37 F. Supp. 875 (S.D. Fla. 1941); Elgin Nat. Watch Co. v. Elgin Razor Corp., 25 F. Supp. 886 (N.D. Ill. 1938). *But cf.* Stork Restaurant, Inc. v. Marcus, 36 F. Supp. 90 (E.D. Pa. 1941). Some courts today still express themselves in terms of business loss and appear to require actual competition. Esskay Art Galleries v. Gibbs, 205 Ark. 1157, 172 S.W.2d 924 (1943).

7. One court has gone so far as to grant relief solely on the ground that the public would think that plaintiff endorsed defendant's product. Triangle Publications v. Rohrlich, 167 F.2d 969 (2d Cir. 1947).

8. Best and Co., Inc. v. Miller, 167 F.2d 374, 377 (2d Cir. 1948), *cert. denied*, 335 U.S. 818 (1948); Louisville Taxicab & Transfer Co. v. Yellow Cab Transit Co., 53 F. Supp. 272, 276 (N.D. Ky. 1943).

9. Elgin Nat. Watch Co. v. Elgin Razor Corp. 25 F. Supp. 886 (N.D. Ill. 1938); Consolidated Home Specialties Co. v. Plotkin, 358 Pa. 14, 20, 55 A.2d 404, 407 (1947).

10. NIMS, UNFAIR COMPETITION AND TRADE MARKS § 86 (3d ed. 1929).

11. Most Worshipful Prince Hall Grand Lodge, Free & Accepted Masons of Georgia v. Supreme Grand Lodge, Modern Free & Accepted Colored

tions have dealt with fraternal organizations, relief was granted on the same basis in one case where a charity sued another charity.[12] Furthermore, the language of the courts in fraternal cases generally has been broad enough to include charitable societies.[13]

It has been argued that a charity should be afforded protection against businesses as well as against other charities when businesses infringe upon its trade name.[14] Businesses have been allowed protection when there was no possibility of competition between the litigants.[15] Therefore, lack of competition between a business and a charity should be no ground for refusing an injunction. In like manner, lack of similarity in business pursuits has not been a ground for refusing injunctive relief to businesses[16] and therefore should not be a ground for refusing such relief to charities. Since the courts have said that nonprofit corporations are to be extended the same relief as businesses in this field,[17] it follows logically that no group against

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Masons of the World, 105 F. Supp. 315 (M.D. Ga. 1951); Salvation Army in the United States v. American Salvation Army, 135 App. Div. 268, 120 N.Y. Supp. 471 (1909). In Society of the War of 1812 v. Society of the War of 1812 in the State of New York, 46 App. Div. 568, 62 N.Y. Supp. 355 (1900), the court said: "The right to injunctive relief is based on interferences with business, whatever that might be, not necessarily commercial." *Id.* at 572, 62 N.Y. Supp. at 358.

12. Salvation Army in the United States v. American Salvation Army, 135 App. Div. 268, 120 N.Y. Supp. 471 (1909).

13. See Grand Lodge of Improved, Benevolent and Protective Order of Elks of the World v. Grand Lodge, Improved, Benevolent and Protective Order of Elks of the World, Inc., 50 F.2d 860 (4th Cir. 1931); Benevolent & Protective Order of Elks v. Improved Benevolent & Protective Order of Elks of the World, 205 N.Y. 459, 98 N.E. 756 (1912). However, in National Circle, Daughters of Isabella v. National Order of Daughters of Isabella, 270 Fed. 723 (2d Cir. 1920), the court said: "It is true that some difference of opinion exists as to whether eleemosynary or charitable corporations having nothing to sell and which do not make money are beyond the protection of the law of unfair competition." *Id.* at 730. It is said later in the opinion: "The right to injunctive relief against the improper use of a corporate name is, by many of the courts, not limited to corporations engaged in business and trade, but it extends to charitable, religious, benevolent, and patriotic societies." *Id.* at 731. The court here cites Salvation Army in the United States v. American Salvation Army, 135 App. Div. 268, 120 N.Y. Supp. 471 (1909) with apparent approval.

14. NIMS, UNFAIR COMPETITION AND TRADE MARKS § 86 (3d ed. 1929).

15. Triangle Publications v. Rohrlich, 167 F.2d 969 (2d Cir. 1947).

16. *Ibid.* Elgin Nat. Watch Co. v. Elgin Razor Corporation, 25 F. Supp. 886 (N.D. Ill. 1938).

17. *See* Order of Owls v. Owl's Club of McKees Rocks, 99 F. Supp. 555 (W.D. Pa. 1951); Society of the War of 1812 v. Society of the War of 1812 in the State of New York, 46 App. Div. 568, 572, 62 N.Y. Supp. 355, 358 (1900).

which a business can maintain an action for trade name infringement should be immune from a similar attack by a charitable organization, no other facts appearing.

In the principal case, where the plaintiff had all the interests in its name which have been protected by the law of unfair competition, and where there were present all the elements considered by modern courts as necessary to trade name protection, together with a finding of fraudulent intent on the defendant's part, the injunction was rightly granted.

TORTS—LESSOR'S LIABILITY FOR INTENTIONAL MISREPRESENTATION TO LESSEE—PURPORTED OFFERS OF THIRD PERSONS

Lessors falsely represented to lessee that one Levine had offered to lease the premises for more than twice the rent lessee then was paying, and that, unless lessee signed a new lease at the higher rental, lessors would evict lessee upon expiration of the existing lease. Relying on this statement, lessee entered into a new lease at the stipulated rental. Upon discovering the deception, lessee brought an action for fraud and deceit. Held: defendant's demurrer to plaintiff's declaration sustained. On appeal to the Supreme Judicial Court of Massachusetts, held: reversed and demurrer overruled. Such a false statement to a tenant, coupled with a threat of eviction,[1] is an actionable misrepresentation and not mere "seller's talk."[2]

On these facts most jursidictions would find the defendants liable for damages that plaintiff had suffered as a result of having relied on lessors' statement.[3] Massachusetts, however, has consistently held that vendors' representations regarding purported offers by third persons were mere "sales talk" and not

1. It is interesting to note the emphasis the plaintiff's brief places on the defendants' threat of eviction and the then existent (1946) shortage of commercial rental premises in Boston. The presence of this duress rendered the fraud constructed by the defendants a very thorough one. [Plaintiff's brief, pp. 11-14.]

2. Kabatchnick v. Hanover-Elm Building Corporation, 103 N.E.2d 692 (Mass. 1952).

3. Baloyan v. Furniture Exhibition Bldg. Co., 258 Mich. 244, 241 N.W. 886 (1932); Brody v. Foster, 134 Minn. 91, 158 N.W. 824 (1916); Monsanto Chemical Works v. American Zinc, Lead, & Smelting Co., 253 S.W. 1006 (Mo. 1923); Isman v. Loring, 130 App. Div. 845, 115 N.Y. Supp. 933 (1st Dep't. 1909); Seaman v. Becar, 15 Misc. 616, 38 N. Y. Supp. 69 (Sup. Ct. 1896); Caples v. Morgan, 81 Ore. 692, 160 Pac. 1154 (1916); Strickland v. Graybill, 97 Va. 602, 34 S.E. 475 (1899).