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).

actionable even though the falseness was intentional,[4] the rationale being that parties were to deal at arm's length and with incipient distrust for each other. Paradoxically, during this same period, Massachusetts courts deemed actionable other misrepresentations which, it would appear, do not possess any greater propensity to deceive than does the misrepresentation by a vendor as to an offer by a third party. Some of these were that a parcel of real estate yielded a certain amount of rent,[5] that a stipulated train schedule was in effect at the depot nearest the farm being offered for sale,[6] that the prospective purchaser of real property was a manufacturer and a man of great wealth.[7]

Courts generally[8] have not found liability for a statement of opinion[9] as contrasted with a statement of material fact or a statement of a fact particularly within the private knowledge of the person weaving the falsity. However, as the court in the instant case correctly perceives, the statement made by the defendants, regarding a matter which was susceptible of their exact knowledge at the time, was quite obviously a representation of a purportedly existing fact. The existence or non-existence of Levine's offer could have been ascertained during the trial. If the falsity of the statement were established, the lessors would not be immune from liability.

By so holding, the Massachusetts court has reversed its former stand on vendors' intentional misstatements about offers made by third parties. Thus Massachusetts is now in accord with the trend of modern decisions which would allow recovery on these facts.[10] Under this modern line of decisions, the doctrine of *caveat emptor*, while not extinguished, has been narrowed. For the type of misrepresentation here involved, Massachusetts will now impose liability in tort for deceit, the other elements of the

4. Shikes v. Gabelnick, 273 Mass. 201, 173 N.E. 495 (1930); Commonwealth v. Quinn, 222 Mass. 504, 111 N.E. 405 (1916); Boles v. Merrill, 173 Mass. 491, 53 N.E. 894 (1899); Cooper v. Lovering, 106 Mass. 77 (1870); Brown v. Castles, 11 Cush. 348 (Mass. 1853); Medbury v. Watson, 6 Metc. 246 (Mass. 1843).

5. Exchange Realty v. Bines, 302 Mass. 93, 18 N.E.2d 425 (1939); Forman v. Hamilburg, 300 Mass. 138, 14 N.E.2d 137 (1938); Brown v. Castles, 11 Cush. 348 (Mass. 1853).

6. Holst v. Stewart, 161 Mass. 516, 37 N.E. 755 (1894).

7. Commonwealth v. Quinn, 222 Mass. 504, 111 N.E. 405 (1916).

8. PROSSER, TORTS 745-758 (1941).

9. *Id.* at 754. Certain exceptions have been engrafted in the case of statements of opinion.

10. Cases cited note 3, *supra*.

action being present. It should be emphasized that the court expressly confines its opinion to this type of statement. Thus, with respect to a large field of bargaining activities, a vendor may still make intentionally false statements for which no action in deceit will lie.[11]

Present-day market-place morals are far from impeccable. By reducing the number of occasions on which a vendor can, without fear of liability, intentionally misrepresent a fact, courts encourage the prudent businessman to adhere to a higher ethic.[12] In turn, this raised ethic can have an expeditious effect on the consummation of commercial affairs, for if parties can trust and rely on the statements of each other, less time need be expended for inquiries and verifications. The decision in the principal case is a commendable one, for it moves in the direction of judicial refutation of the malodorous saw that profits and morals are antithetical concepts.

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11. For a collection of cases illustrative of what modern courts categorize as "sales talk," see 22 MINN. L. REV. 939, 1004-1005 (1938).

12. One of Missouri's jurists has said that there exists in the law no rule which holds man's heart prone to wickedness or which requires that man must treat his fellow man as a thief or robber. Lamm, J., in Judd v. Walker, 215 Mo. 312, 114 S.W. 979, 981 (1908).