

TRADEMARKS—GERMAN MANUFACTURER'S DELIBERATE INFRINGEMENT OF DOMESTIC TRADEMARK SUFFICIENT TO SUPPORT INJUNCTIVE RELIEF, BUT NOT SUPPORTIVE OF AWARD FOR DAMAGES.

After a long period of inactivity in the American market, plaintiff German manufacturer¹ reentered the market, exporting pianos with trademarks identical to those of defendant domestic manufacturer who held registered trademarks² under the Lanham Act.³ After many years of conflict,⁴ Grotrian, Helfferich, Schulz, Th. Steinweg Nachf. (hereinafter referred to as Grotrian) brought an action for declaratory judgment in response to the opposition of Steinway & Sons (hereinafter referred to as Steinway) to Grotrian's application for registration in the United States

¹ Plaintiff was Grotrian, Helfferich, Schulz, Th. Steinweg Nachf. [hereinafter referred to as Grotrian]. Defendant was American manufacturer Steinway & Sons, [hereinafter referred to as Steinway], a major domestic producer of pianos since 1850.

² Steinway's trademarks included "Steinway & Sons," Trademark Registration No. 45,846 (Aug. 29, 1905); "Steinway," Trademark Registration No. 141,687 (April 26, 1921); and "Steinway—The Instrument of the Immortals," Trademark Registration No. 285-732 (Aug. 4, 1931), 523 F.2d 1331, at 1335 n.5.

³ 15 U.S.C. §§ 1051-1127 (1970).

⁴ The court found that the history of the relationship between the two parties was essential to understanding the issues involved. In 1885 Heinrich E. Steinweg began the manufacture of pianos in Germany. He emigrated to New York with three sons in 1850, changed his name to Steinway and founded Steinway & Sons. His oldest son, C. F. Theodor Steinweg, remained in Germany and began to make pianos under his own name. After selling his business to three employees (Wilhelm Grotrian, Adolph Helfferich and H. G. W. Schulz), he moved to New York in 1866 and joined Steinway & Sons as a partner.

The sale of the business included the right to use the name "C. F. Th. Steinweg Nachf." for ten years. Later the name was changed to the present corporate name. Grotrian thereafter registered "Grotrian-Steinweg" and "Steinweg" in Germany. The trademark "Steinweg" was cancelled as a result of a suit by Steinway against Grotrian. In 1918 the Grotrian family petitioned German officials to change its name to "Steinweg, or at least Grotrian Steinweg," primarily to aid in the export of its product. This petition was granted to the extent of changing the name to "Grotrian Steinweg."

Grotrian first exported pianos to the United States in 1925. It sold a total of 25 pianos until Steinway learned of these sales in 1928 and protested, claiming tradename infringement. It demanded discontinuance of the use of the name, but Grotrian, undaunted, increased its shipments to 47 in 1929. Thereafter an official of Steinway went to Germany for a personal confrontation and a settlement was reached, symbolized by the smoking of a cigar (the "peace cigar settlement"). Between 1932 and 1952 no pianos were exported to the United States.

Grotrian reentered the American market in 1952 on a mail order basis. It then exported a total of 458 pianos for the next twenty years and distributed them through small dealers, supplying the dealers with their own promotional materials. Steinway learned of these sales as early as 1957 but did nothing until 1967. In January of that year, Grotrian entered into a distributing agreement with the Wurlitzer Company for sale and distribution for five years. After issuing a press release Wurlitzer was threatened with legal action by Steinway to prevent the sale of these pianos in the United States. Wurlitzer subsequently cancelled the distribution contract.

No legal action was taken by either party until the instant action was begun on July 29, 1969.

of the trademark "Grotrian-Steinweg".⁵ Steinway filed a counterclaim under the Federal Trademark Act (hereinafter referred to as the Lanham Act⁶) and at common law for trademark infringement and unfair competition.⁷ The district court granted an injunction to Steinway after concluding that Grotrian had infringed its trademarks in violation of § 32(1) of the Lanham Act⁸ and allowed recovery of damages for infringement and profits made by Grotrian along with the costs of the action under § 35.⁹ It further denied all relief sought by Grotrian and dismissed its complaint.¹⁰ *Held*, affirmed in part, modified in part. While the district court's finding of conscious and intentional infringement was not clearly erroneous, the failure of Steinway to act for ten years after Grotrian's sales began again was an abandonment of any claim for monetary relief despite Grotrian's deliberate infringement. *Grotrian, Helfferich, Schulz, Th. Steinweg Nachf. v. Steinway & Sons*, 523 F.2d 1331 (2d Cir. 1975).

Although the use of marks on goods can be traced back four thousand years, the present judicial conception of the function of a trademark has its source in usage as a mark of origin in merchant's guilds in the Middle Ages.¹¹ Common law developments and prior statutory attempts were codified in the Lanham Act in 1946, primarily to strengthen the protection of these intangible property rights. Most writers have traditionally viewed trademarks as having a dual function: (1) identification of the source of origin of a particular product and the protection of the manufacturer's investment in it and (2) protection of the public from deceit.¹²

⁵ On Sept. 11, 1967, Grotrian filed an application, Serial No. 280,051 in the Patent Office, seeking registration of its trademark "Grotrian-Steinweg" and design. After publication for operation, Steinway filed a Notice of Opposition on March 19, 1969. 523 F.2d at 1335 n.3.

⁶ 15 U.S.C. §§ 1051-1127 (1970).

⁷ In addition to a declaratory judgment that its trademark did not infringe Steinway's mark, Grotrian sought to enjoin Steinway's threats of interference with its use of its trademark and from filing suit anywhere in the world to challenge Grotrian. It also sought \$93,000 damages for tortious interference with its contractual relationship with Wurlitzer, plus attorneys' fees.

Steinway sought an injunction of Grotrian's use of the word "Steinweg" and an accounting of all profits received as a result of Grotrian's activities. It also sought compensatory and punitive damages for injuries, plus attorneys' fees. Grotrian's reply pleaded the defenses of laches and unclean hands. 523 F.2d at 1335.

⁸ 15 U.S.C. § 1114(1) (1970).

⁹ 15 U.S.C. § 1117.

¹⁰ 365 F. Supp. 707 (S.D.N.Y. 1973).

¹¹ F. SCHECHTER, *THE HISTORICAL FOUNDATIONS OF THE LAW RELATING TO TRADE-MARKS*, 20-21 (1925). For the common law definition of trademarks, see 3 *REST. TORTS* § 715 (1938). This definition is substantially the same under the Lanham Act.

¹² S. Rep. No. 1333, 79th Cong., 2d Sess. (1946). The Congressional purpose behind the 1946 enactment was succinctly stated:

To protect trademarks, therefore, is to protect the public from deceit, to foster fair competition, and to secure to the business community the advantages of reputation and goodwill by preventing their diversion from those who have created them to those who have not. This is the end to which this bill is directed.

Trademark infringement, as a species of the broader tort spectrum of unfair competition, is an area of the law peculiarly dependent on the fact situation presented in each case.¹³ Most major actions are based on § 32(1) of the Lanham Act which prevents the "use in commerce [of] any reproduction . . . of a registered mark in connection with the sale . . . of any goods or services . . . with which such use is likely to cause confusion, or . . . mistake, or to deceive."¹⁴ Section 35 provides substantial recovery for those who can establish a violation of § 32: "[t]he plaintiff shall be entitled . . . , subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action."¹⁵

The decisive issue in a determination of infringement is a judicial finding of likelihood of confusion¹⁶ in the minds of the purchasing public.¹⁷ Fraudulent intent, even though not a necessity for proof of infringement of a registered mark,¹⁸ is an important element in determining likelihood of confusion.¹⁹ Originally, this confusion which the Lanham Act attempted to prevent was primarily that of purchasers as to source of origin. The 1962 amendment broadened the scope of protection to include other types of confusion or deception.²⁰ Even when the two marks could be distinguished

¹³ The necessity of the case-by-case approach was aptly stated by Judge Sneed in *HMH Publishing Co. v. Brincat*, 504 F.2d 713 (9th Cir. 1974):

Trademark infringement is a peculiarly complex area of the law. Its hallmarks are doctrinal confusion, conflicting results, and judicial prolixity. The source of this difficulty is that each case involves an effort to achieve three distinct objectives which, to a degree, are in conflict. These are: (1) to protect consumers from being misled as to . . . enterprises, from which the goods or services emanate . . . ; (2) to prevent an impairment of the value of the enterprise which owns the trademark; and (3) to achieve these ends in a manner consistent with the objectives of free competition.

Id. at 716.

¹⁴ 15 U.S.C. § 1114(1) (a) (1970). This section provides for civil liability without the necessity of proving intent to deceive. *Id.* § 1114(1).

¹⁵ *Id.* § 1117.

¹⁶ *Baker v. Simmons Co.*, 307 F.2d 458, 461 (1st Cir. 1962).

¹⁷ The factors to determine likelihood of confusion used by the district court included the strength of the Steinway marks; the purpose of adoption by the alleged infringer; the degree of similarity between the two; the degree of similarity of the products; the competitive proximity of the products; and actual confusion and degree of care likely to be exercised by purchasers. 365 F. Supp. at 712. *See also* 3 REST. TORTS § 729 (1938); *B&L Associates v. H. Daroff & Sons, Inc.*, 421 F.2d 352, 354 (2d Cir. 1970); *Miss Universe, Inc. v. Patricelli*, 408 F.2d 506, 509 (2d Cir. 1969). Here, Grotrian did not contest the legal standard use by the trial court; rather, it challenged the finding of likelihood of confusion. 523 F.2d at 1336.

¹⁸ 2 S. MCCARTHY, TRADEMARKS AND UNFAIR COMPETITION, 23.31 (1973).

¹⁹ *Straus v. Notaseme Hosiery Co.*, 240 U.S. 179 (1916).

²⁰ *Syntex Laboratories, Inc. v. Norwich Pharmacal Co.*, 437 F.2d 566, 568 (2d Cir. 1971). The Senate report states that these changes were made for clarification and coordination, and to include "potential as well as actual purchasers." S. Rep. No. 2107, 87th Cong., 2d Sess. 2847 (1962).

by a detailed comparison, the "general overall impression" of the trademark is the test to be applied.²¹

Turning to the instant case, the appellate court extensively reviewed the findings of the district court.²² The court examined the evidence of Grotrian's deliberate intent to infringe, as the plaintiff urged that Steinway was collaterally estopped from attacking a factual determination of bad faith litigated in the German Supreme Court in 1926. The court refused to reach this issue on appeal, deciding in the alternative that a finding of malice was amply supported by the evidence of Grotrian's actions since 1926.²³ The translation of the surname into English resulted in virtually identical sounds.²⁴ Blatant reproduction of Steinway's slogan was also found in other advertising brochures published by Grotrian.²⁵

The court then turned to the factors of the similarity of the marks, actual confusion, and the degree of care likely to be exercised by purchasers. Although a visual distinction was possible (the typefaces were different

²¹ Harold F. Ritchie, Inc. v. Cheesebrough-Pond's, Inc., 281 F.2d 755, 762 (2d Cir. 1960).

²² Under Rule 52(a) of the Federal Rules, the standard of review is the "clearly erroneous" standard. Fed. R. Civ. P. 52(a), 28 U.S.C. However, the alleged infringer's intent is usually an issue to be determined by the trial court. *Miss Universe, Inc. v. Patricelli*, 408 F.2d 506, 509 (2d Cir. 1969). Since the evidence here was a comparison of advertising copy and the marks themselves, the appellate court is in as good a position to make the determination as the trial court. See *Blue Bell, Inc. v. Jaymar-Ruby, Inc.*, 497 F.2d 433 (2d Cir. 1974). For other cases holding the same, see *Kiki Undies Corp. v. Promenade Hosiery Mills, Inc.*, 411 F.2d 1097, 1100 (2d Cir. 1969); *J. R. Wood & Sons, Inc. v. Reese Jewelry Corp.*, 278 F.2d 157, 158 (2d Cir. 1960). *Miles Shoes v. R. H. Macy & Co.*, 199 F.2d 602, 603 (2d Cir. 1952); Determination of actual confusion is reserved for the district court as the trier of fact. *Blue Bell, Inc. v. Jaymar-Ruby, Inc.*, *supra*, 497 F.2d at 435.

²³ 523 F.2d at 1337. Grotrian urged that the district court had rewritten the firm's history and, as the court stated, "seems especially piqued that the court inferred bad faith from the family's name change." *Id.* In offering the decisions of the German court, the plaintiff was attempting to prove the lack of bad faith as previously determined in a judicial proceeding. The admissibility of these decisions was challenged under Fed. R. Civ. P. 44(a), but the district court refused to rule on their admissibility, holding that they were irrelevant on the ground that decisions of foreign courts on the respective trademark rights of the parties have no application to litigation in an American court concerning trademark rights. 365 F. Supp. at 719. The appellate court refused to reach the "tempting" issues of Rule 44(a) and collateral estoppel from the German decisions. 523 F.2d at 1337.

²⁴ This resulting identity was exploited by the plaintiff's instructions to its dealers in its advertising materials, which gave instructions as to the phonetic pronunciation to English-speaking readers. 523 F.2d at 1338.

²⁵ The plaintiff's assertion of lack of knowledge of the registration (not the existence) of the slogan was insufficient to justify its copying. Neither was it a common term entitled to "fair use" by all. Section 33(b)(4) establishes the "fair use" defense, constituting use other than as a trademark of the "party's individual name in his own business. . . ." 15 U.S.C. § 1115(b)(4). This is a statutory statement of a common law defense and can only succeed when the term is used in a manner other than as a trademark. *Venetianaire Corp. of America v. A & P Import Co.*, 429 F.2d 1079, 1082 (2d Cir. 1970). See also 2 R. CALLMANN, *THE LAW OF UNFAIR COMPETITION AND TRADEMARKS* § 85.1(b) (3d ed. 1967) [hereinafter cited as CALLMANN]; *Kiki Undies Corp. v. Alexander's Department Stores*, 390 F.2d 604 (2d Cir. 1968).

and the surname was hyphenated), the conclusion that auditory confusion was inevitable indicated a substantial similarity of marks.²⁶ The fact that the parties were in direct competition for a limited class of customer was undisputed. Since the Steinway name was one of such distinction in the United States, association of the two in the domestic market was inevitable. Several instances of actual dealer confusion were cited, and two surveys commissioned by Steinway were admitted that demonstrated actual confusion.²⁷ When considering the degree of care likely to be exercised by the class of purchasers, the court refused to hold that "actual or potential confusion *at the time of purchase* necessarily must be demonstrated to establish trademark infringement under the circumstances of this case."²⁸ Despite the care exercised by potential purchasers, the court held that Grotrian intentionally infringed Steinway's trademarks and had engaged in unfair competition.²⁹

The relief granted below was modified to vacate the award of damages and profits on the basis of Steinway's failure to take action in the ten years following its first notification of Grotrian's reentry into the American market. The court agreed that there had been no prejudice to Grotrian because of the delay, thereby disallowing the defense of laches.³⁰ However, since the

²⁶ The court began its examination of the similarity of sound by stating that "[t]rademarks, like small children, are not only seen but heard." 523 F.2d at 1340. Similarity of sound is another factor to be weighed in determining likelihood of confusion. *LaTouraine Coffee Co. v. Lorraine Coffee Co.*, 157 F.2d 115, 117 (2d Cir.), *cert. denied*, 329 U.S. 771 (1946); *David Sherman Corp. v. Heublein, Inc.*, 340 F.2d 377, 380 (8th Cir. 1965).

²⁷ 523 F.2d at 1340. The admission of the surveys was challenged by Grotrian on appeal. Substantial authority supported the admission of such surveys and the court held that there was no error in admitting such evidence but rather considered the weight to be given to the surveys. On the question of admissibility of surveys in proof of confusion, *see generally*, *President and Trustees of Colby College v. Colby College-New Hampshire*, 508 F.2d 804, 809 (1st Cir. 1975); *Holiday Inns, Inc. v. Holiday Out in America*, 481 F.2d 445, 447 (5th Cir. 1973).

²⁸ 523 F.2d at 1342 (emphasis by court). The district court had held that the sophistication or discrimination of the limited class of customer was insufficient to eliminate the likelihood of confusion. 365 F. Supp. at 717. The appellate court rejected Grotrian's contention that the nature and cost of the product had received insufficient consideration. The harm to Steinway was that consumers were likely to associate the two names and the likelihood that Grotrian would attract customers based on Steinway's past reputation. *HMH Publishing Co. v. Brincat*, 504 F.2d 713, 716 (9th Cir. 1974); *Triangle Publications, Inc. v. Rohrlisch*, 167 F.2d 969, 973 (2d Cir. 1948), *overruled in part on other grounds*, *Monsanto Chemical Co. v. Perfect Fit Products Mfg. Co.*, 349 F.2d 389 (2d Cir. 1965) (on question of availability of accounting).

²⁹ The unfair competition claim was governed by the same considerations as the infringement claim. For the same reasons that the court held that Grotrian's actions constituted infringement, the court upheld the district court finding of unfair competition. 523 F.2d at 1342 n.21.

³⁰ 523 F.2d at 1343. The court felt that there was no abuse of discretion by the lower court in view of Grotrian's deliberate attempt to trade on Steinway's reputation. *Id.* at 1344. *See Monsanto Chemical Co. v. Perfect Fit Products Mfg. Co.*, 349 F.2d 389, 397 (2d Cir. 1965); *My-T Fine Corp. v. Samuels*, 69 F.2d 76, 77 (2d Cir. 1934); *Yale Electric Corp. v. Robertson*, 26 F.2d 972, 974 (2d Cir. 1928).

award of damages in infringement cases is expressly subject to principles of equity,³¹ the court held that Steinway had abandoned its claim for monetary relief.³² Injunctive relief against future infringement is not necessarily accompanied by a monetary award for past damages suffered.³³

In overall results, the court was correct in its assessment of the infringement and unfair competition suffered by the defendant. The factor that appeared most significant in the weighing of the peculiar facts involved was the deliberate nature of the plaintiff's infringement. Even this intentional conduct will, however, remain subject to principles of equity in each case where justice requires consideration of delays occasioned by either party.

As a sidelight to the actual decision, it is interesting to watch the court follow the lead of other cases in this area, avoiding questions of conflicts of laws principles and the application of foreign judgments.³⁴ While the rights and liabilities of United States citizens who compete with foreign nationals in their home countries are governed by foreign law, the existence of multilateral conventions on the subject rarely enters into actual litigation.³⁵ The existing multilateral treaty on trademark protection and unfair competition, the Paris Convention for the Protection of Industrial Property,³⁶ has as its basic principle the use of the domestic law of each member state.³⁷ A minimum standard of unlawful competition has been set in article 10,³⁸ but the implementation of this guaranteed minimum is left to each

³¹ Lanham Act § 35, 15 U.S.C. § 1117; *Carl Zeiss Stiftung v. Veb Carl Zeiss Jena*, 433 F.2d 686, 706-07 (2d Cir. 1970). Section 35 gives the district court the "broadest kind of discretion in tailoring the plaintiff's recovery. . . ." *Monsanto Chemical Co. v. Perfect Fit Products Mfg. Co.*, 349 F.2d 389, 392 (2d Cir. 1965).

³² 523 F.2d at 1344. This was done notwithstanding the deliberate infringement. *See Hanover Star Milling Co. v. Metcalf*, 240 U.S. 403, 419 (1916).

³³ *Monsanto Chemical Co. v. Perfect Fit Products Mfg. Co.*, 349 F.2d 389, 392 (2d Cir. 1965). An accounting of profits is proper if it can be inferred that there is a relationship between these profits and the injury suffered, as an indirect measurement of the injury. *Id.* This can be allowed in cases other than where the parties are in direct competition. *Id.* at 395.

³⁴ *See note 23 supra.* Most American cases involving questions of unfair competition in connection with other countries have ignored questions of conflicts principles. *Vanity Fair Mills v. T. Eaton Co.*, 234 F.2d 633, 639 n.7 (2d Cir. 1956).

³⁵ The international convention (to which the United States is a party) provides protection to United States trademarks only to the extent that the foreign law involved recognizes this as a treaty obligation creating private rights. *See Convention Revising the Paris Convention for the Protection of Industrial Property of March 20, 1883, art. 2, done July 14, 1967*, 21 U.S.T. 1583, T.I.A.S. No. 6923 (1970) [hereinafter cited as Paris Convention].

³⁶ *Id.*

³⁷ *Wengler, Laws Concerning Unfair Competition and the Conflict of Laws*, 4 AM. J. COMP. L. 167, 171 (1955) [hereinafter cited as *Wengler*].

³⁸ Paris Convention, *supra* note 35. This article states:

- (1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.
- (2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

signatory. In addition, no international oversight is provided. This basis in national law creates practical difficulties in extraterritorial enforcement of one's domestic law, as well as necessitating invocation of principles of international comity³⁹ in cases where relief is sought for actions taken outside the territorial limits. The Convention merely assures that foreign nationals will be given the same treatment in each member state as that country makes available to its own citizens, and creates no private rights under United States law for acts of unfair competition occurring in foreign countries.⁴⁰ Section 44 of the Lanham Act, as an attempt to implement this Convention, provides certain benefits to signatories under the federal registration system.⁴¹ Legal rights are further complicated due to the distinct groups of member countries who have either ratified or failed to ratify the subsequent revisions of the Convention.⁴²

Conflicts principles and questions of the applicability of foreign judgments could present additional problems in this area. This court refused to rule on these questions, finding alternative grounds for disposition of the case.⁴³ In the absence of a controlling international obligation, other policy issues assume decisive importance and decisions reached will reflect national self-interest⁴⁴ rather than being based entirely on the merits of the

(3) The following in particular shall be prohibited:

1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
2. false allegations of the course of trade which are of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities of a competitor;
3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity, of the goods.

Id. art. 10.

³⁹ *Vanity Fair Mills v. T. Eaton Co.*, 234 F.2d 633, 639 (2d Cir. 1956).

⁴⁰ *Id.* at 640. The Paris Convention itself is not directly applicable in the instant case, as this involved trademark rights within the United States subsequent to Grotian's application to register its trademark. 523 F.2d at 1334-35. The Paris Convention does not insulate foreign nationals from liability for trademark infringement committed in the United States. 4 CALLMANN, *supra* note 25, § 99.2 (Supp. 1975).

⁴¹ Lanham Act § 44, 15 U.S.C. § 1126 (1970). *But see* Frayne, *History and Analysis of TRT*, 63 TRADEMARK REP. 422, 440 (1973) [hereinafter cited as Frayne].

⁴² 4 CALLMANN, *supra* note 25, § 99.1. On June 12, 1973, the United States signed the new Trademark Registration Treaty which is of yet unratified by the Senate. This treaty is still not a true international registration of trademarks. Essentially it remains a filing treaty. Once the filing has occurred, national law again regulates the rights of the trademark holders. Frayne, *supra* note 41, at 430. For an exposition of the principal provisions of this treaty, *see id.* at 431-34.

⁴³ *See* note 23 *supra*.

⁴⁴ Note, *Toward a Substantive Private International Law of Trademarks: The Lessons of the Carl Zeiss Litigation*, 82 YALE L. J. 1072, 1081 (1973) [hereinafter cited as Note]. To raise conflicts questions, the case must necessarily involve a conflict with a foreign legal system. Such is not the case here.

case. Even though there is substantial agreement among all legal systems on the general principles of unfair competition,⁴⁵ uniform international law would eliminate conflicts among legal systems.⁴⁶ At present, the lack of consensus⁴⁷ on the applicability of foreign judgments encourages domestic courts to avoid resolution of conflicts issues and to base decisions on alternative grounds. Definitive resolution on the international level would be a better solution, taking such questions out of the hands of domestic courts. The ultimate purpose of the system of trademark rights is to protect the consuming public. All nations share this interest,⁴⁸ which should facilitate international cooperation.

If current growth of international commerce continues as expected, conflicts between nations in the interest of protection of domestic markets will substantially increase. It is hoped that satisfactory resolution of these conflicting demands will be forthcoming, as the problems of international trade are of vital concern to the international economy: "World trade is pre-eminently a matter of international concern; the inexorable corollary is that traders must comply with and contribute to the realization of international standards. The enormous power of global corporations is of great political consequence and must be subjected to commensurate supervision and direction."⁴⁹ The Second Circuit correctly decided the issues of domestic trademark infringement before it. In particular, its denial of damages recognizes the overriding principles of equity in fashioning appropriate relief. However, the avoidance of the "tempting" issues of foreign litigation reemphasizes the need for effective international agreement. It remains to be seen if a truly effective international obligation governing the respective rights of trademark owners in foreign countries, whether by treaty commitment or uniform national laws, can be developed in the field of trademark rights and unfair competition.

Kimley R. Johnson

⁴⁵ Rapoport, *Trade-Mark and Unfair Competition in International Conflict of Laws: An Analysis of the Choice of Law Problem*, 20 U. PITT. L. REV. 1, 15 (1958-59).

⁴⁶ Wengler, *supra* note 37, at 169-70. The issue of collateral estoppel from foreign judgments was also avoided by this court. For a discussion of these questions, see Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 U.C.L.A. L. REV. 44, 69-74 (1962).

⁴⁷ It is unclear exactly what American practice is regarding issues of fact preclusion in foreign litigation. See Lewis, *Mutuality in Conflict—Flexibility and Full Faith and Credit*, 23 DRAKE L. REV. 365 (1974) for a discussion of the various practices in the United States.

⁴⁸ Note, *supra* note 44, at 1090. For a discussion of the current attempt at an international registration system and its advantages and disadvantages for the United States, see 63 TRADEMARK REP., an entire issue devoted to the Trademark Registration Treaty.

⁴⁹ Reisman, *Polaroid Power: Taxing Business for Human Rights*, 4 FOREIGN POLICY 101, 109 (1971).