

IN THE MATTER of the Petition of

CHRISTIE BROWN CO., LIMITED, OF THE 1920
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO, September 7.
CANADA,

AND

IN THE MATTER OF A SPECIFIC TRADE MARK TO
BE USED IN CONNECTION WITH THE MANUFACTURE
AND SALE OF BISCUITS, CAKE, PUDDINGS, AND
INFANTS' FOOD.

Trade-Marks—Names—Registration thereof.

Petitioners had manufactured biscuits, cake, puddings and infants' foods for a great number of years, and had adopted and used the word or name "Christie" as a trade-mark on labels and in advertising to denote and distinguish their goods. The word "Christie" had been used alone, not associated with the word "biscuits" or other words and had acquired a distinctive meaning.

Held. On the facts stated (following the decision of the Supreme Court, in the case of *Horlick Malted Milk* (1), that the word "Christie" should be registered as a specific trade-mark to be used in connection with the manufacture and sale of biscuits, cake, puddings and infants' foods.

PETITION praying for an order directing that the trade-mark "Christie" may be registered as a specific trade-mark to be used in connection with the manufacture and sales of biscuits, etc.

(1) Judgment rendered 1st May, 1917. Not reported.

Reporter's note.—In the case of the *Welch Company Limited*, decided the same day by Audette J. this case is referred to and followed, and the word "Welch's" was ordered to be registered.

1929

In Re
CHRISTIE
TRADE-MARK

Statement.

Reasons for
Judgment.

In the petition it is alleged that petitioners are the proprietors of a trade-mark consisting of the word "Christie" which has been used by them for many years in connection with the manufacture and sale of Biscuits, Cake, Puddings and Infants' Food, manufactured and sold by them and which distinguishes said goods from similar goods manufactured and sold by others, which said trade-mark is known throughout Canada as denoting and distinguishing the goods of your Petitioners.

That the Petitioners made application to the Minister of Agriculture of the Dominion of Canada, for the registration of the said trade-mark as above described as a specific trade-mark to be used in connection with the manufacture and sale of biscuits, cake, puddings and infants' food, in accordance with the provisions of the Trade-Mark and Design Act.

That the Minister of Agriculture by letter dated December 15th, 1914, refused to register the said trade-mark on the grounds that it is a surname and could be registered only in accordance with an order from the Exchequer Court of Canada.

That as a matter of fact the word "Christie" has through long continued use and extensive sale acquired a secondary and trade-mark meaning denoting and distinguishing goods manufactured and sold by the Petitioners.

From several affidavits filed it is established that the petitioners have been manufacturing biscuits, cake and infants' goods for a great number of years and that the trade-mark "Christie" has been used by them to denote the goods manufactured by them and has acquired a distinctive meaning; that the said

word "Christie" has been used alone, and not the name of the petitioners' company, as a specific trade-mark aforesaid; and that said word "Christie" was not associated with the word "biscuits" or other words; and that, for a great number of years, biscuits manufactured by the Petitioners have had the word "Christie" alone stamped thereon and said word has been used in advertising and on labels to denote and distinguish the goods of the petitioners.

The application first came before the President of Court, on the 2nd. March, 1920, but was then enlarged to permit petitioners to furnish further evidence.

The application again came up on the 7th of September, 1920, and order for registration of the trade-mark as prayed for, was granted on the same day.

Russell Smart, counsel for petitioners.

THE PRESIDENT OF THE COURT, now (this 7th September, 1920), delivered judgment.

This application stood over with the view of furnishing further evidence. The petitioner has now shewn that for a great number of years the word "Christie" alone has been used on the biscuits manufactured by the firm. I should doubt very much the validity of such a trade-mark as the word "Christie" alone. My granting the order to register does not conclude any validity of the trade-mark, should an action be brought on the trade-mark, for contesting its validity. It has the effect merely of casting the onus upon the parties sued. In any event I find myself bound by the judgment of the Supreme Court of the 1st of May, 1917, in the Petition of the Horlick Malted Milk Co. to have their trade-mark "Horlick's"

1920
In Re
 CHRISTIE
 TRADE-MARK
 Statement.
 Reasons for
 Judgment.

1920 · registered. The Supreme Court have thought that
In re they were entitled to register such a trade-mark and
CHRISTIE directed by their formal judgment that the word
TRADE-MARK “Horlick’s ” be registered. The case of “Christie” is
Reasons for very much stronger than that of Horlick and I am
Judgment. bound by the judgment of the Supreme Court. I
order that the word “Christie” as applied to biscuits,
cake, puddings and infants’ foods be registered as
prayed.

Ordered accordingly.
