

Saxlehner Vs. Wagner

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Court : US Supreme Court

Decided On : Feb-21-1910

Appeal No. : 216 U.S. 375

Appellant : Saxlehner

Respondent : Wagner

Judgement :

Saxlehner v. Wagner - 216 U.S. 375 (1910)

U.S. Supreme Court Saxlehner v. Wagner, 216 U.S. 375 (1910)

Saxlehner v. Wagner

No. 81

Argued January 17, 1910

Decided February 21, 1910

216 U.S. 375

CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SYLLABUS

The right to individual appropriation, once lost, is gone forever.

Where a geographic or family name becomes the name for a natural water coming from a more or less extensive district, all are free to try to imitate it, and the owners of one of such natural springs cannot prevent the sale of an artificial water as being similar to that of the natural spring where there is no attempt to deceive the public as to its being artificial.

Hunyadi is now in effect a geographical expression, and the owners of the Hunyadi Janos Springs cannot prevent the sale of artificial Hunyadi water where there is no deception of the public as to its being an imitation.

157 F. 745 affirmed.

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The facts, which involve the right of the owners of the Hunyadi Janos Springs to enjoin the sale of artificial Hunyadi water, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

The petitioner is the owner of wells in Budapest from which comes the water known throughout the world by the arbitrary name, "Hunyadi Janos," given to it by her husband. The

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respondents make a bitter water in Cincinnati, and label it "W. T. Wagner's Sons Carbonated Artificial Hunyadi, Conforming to Fresenius Analysis of Hunyadi Janos Springs." Formerly they for a time labeled it "W. T. Wagner's Sons Artificial Hunyadi Janos. Ofen Bitter Water. Highly Aerated," but this label had been given

up before the bill was brought. The petitioner seeks an injunction against the use of either "Hunyadi Janos" or "Hunyadi" on any water not coming from her wells. The Circuit Court of Appeals for the Seventh Circuit, in a more or less similar case, granted an injunction against the use of the word "Hunyadi." *Thackeray v. Saxlehner*, 125 F. 911. In the present suit, the circuit court and the circuit court of appeals, treating the right of the petitioners to "Hunyadi Janos" as admitted, refused an injunction against the use of "Hunyadi," and, finding that no unfair competition was shown, dismissed the bill. 157 F. 745. A writ of certiorari was allowed by this Court.

We see no reason for disturbing the finding of the courts below, that there was no unfair competition and no fraud. The real intent of the plaintiff's bill, it seems to us, is to extend the monopoly of such trademark or tradename as she may have to a monopoly of her type of bitter water, by preventing manufacturers from telling the public in a way that will be understood, what they are copying and trying to sell. But the plaintiff has no patent for the water, and the defendants have a right to reproduce it as nearly as they can. They have a right to tell the public what they are doing, and to get whatever share they can in the popularity of the water by advertising that they are trying to make the same article, and think that they succeed. If they do not convey, but, on the contrary, exclude, the notion that they are selling the plaintiff's goods, it is a strong proposition that, when the article has a well known name, they have not the right to explain by that name what they imitate. By doing so, they are not trying to get the goodwill of the name, but the goodwill

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of the goods. See *Flagg Mfg. Co. v. Holway*, 178 Mass. 83, 91; *Chadwick v. Covell*, 151 Mass.190, 191. Although the application is different, the principle seems to be similar to the rule that, when a patent has expired, descriptive words or even an arbitrary or personal name by which it has become known may be used if sufficient precautions are taken to prevent the public from being deceived. See *Singer Manufacturing Co. v. June Manufacturing Co.*, [163 U. S. 169](#) .

The plaintiff says that no one can succeed in imitating a natural water. But all are free to try. In the absence of some fraud injurious to the plaintiff, it would be going far under any circumstances to allow her to prevent advertising "Artificial Hunyadi." But it is enough to say that, under the decision in *Saxlehner v. Eisner & Mendelson Co.*, [179 U. S. 19](#) , [179 U. S. 36](#) , the defendants may do so in this case. In that decision it was said that "Hunyadi," as applied to similar water, had been public property in Hungary, and therefore had become so here, and that a later change there would not work a corresponding change in the United States. "The right to individual appropriation, once lost, is gone forever." See also *French Republic v. Saratoga Vichy Co.*, [191 U. S. 427](#) , [191 U. S. 437](#) . At the very least, the family name has become the name for any natural water of a certain type coming from a more or less extensive district, if not from anywhere in Hungary. It does not belong to the plaintiff alone in this country, even if she is the only one now sending the water here. But if there is any well founded doubt as to the right to use a personal tradename with proper guards against deception to signify what one is imitating, where one has the right to imitate, there can be none that one is at liberty to refer to a geographical expression to signify the source of one's model. "Hunyadi," at best, is now only a geographical expression in effect.

Decree affirmed.