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French Art Cleaners v. State Bd. of Dry Cleaners

Roger J. Traynor

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[S. F. No. 18570. In Bank. Mar. 10, 1953.]

FRENCH ART CLEANERS (a Corporation) et al., Respondents, v. STATE BOARD OF DRY CLEANERS, Appellant.

BEST SERVICE CLEANERS (a Corporation) et al., Respondents, v. STATE BOARD OF DRY CLEANERS et al., Appellants.

[1] **Trademarks—Unfair Competition—Necessity for Actual Deception or Injury.**—Injunctive relief to prevent dry cleaning establishments from violating minimum price schedules fixed by the State Board of Dry Cleaners is properly denied where the evidence sustains specific findings of fact that advertising of an economical grade of service did not defraud or mislead members of the public in violation of the Unfair Practices Act (Bus. & Prof. Code., div. 7, pt. 2, ch. 4).

APPEALS from judgments of the Superior Court of the City and County of San Francisco. Edward Molkenbuhr, Judge. **Affirmed.**

[1] See **Cal.Jur.**, Trademarks, Trade Names and Unfair Competition, § 16 et seq.; **Am.Jur.**, Trademarks, Trade Names and Trade Practices, § 173 et seq.

McK. Dig. Reference: [1] Trademarks, § 28.

Actions for injunctive relief. Judgments for plaintiffs affirmed.

Edmund G. Brown, Attorney General, and J. Albert Hutchinson, Deputy Attorney General, for Appellants.

George M. Naus, Nathan Kessler, Harold B. Lerner, McFarland, Laumeister & Ferdon and Harry L. Kuchins, Jr., for Respondents.

SHENK, J.—These are direct appeals from judgments of the superior court enjoining the defendants from enforcing the price fixing portions of the Dry Cleaners' Act of 1945 embodied in sections 9560 through 9567 of the Business and Professions Code, and declaring those sections to be unconstitutional under the due process clauses of the state and federal Constitutions. The court also denied injunctive relief sought by the defendants under their cross-complaints. The issues set forth in the pleadings in the two cases are the same and the proceedings were consolidated for trial by stipulation and order. However, separate judgments were rendered and separate appeals have been taken.

The controversy in each case arose over an order adopted by the State Board of Dry Cleaners fixing minimum prices for various articles of apparel as provided for in the challenged sections of the code. The plaintiffs brought the actions to enjoin the enforcement of the orders on the ground that the price fixing provisions of that statute are invalid. The defendant board sought injunctive relief in its cross-complaints to prevent the plaintiffs from violating the order and minimum price schedules fixed by the board. The question is the constitutional validity of those sections of the statute providing for the fixing of prices by the board. In this respect the issues are the same as those involved in the companion case of *State Board of Dry Cleaners v. Thrift-D-Lux Cleaners*, ante, p. 436 [254 P.2d 29] this day filed.

[1] In its pleadings the defendant board also seeks injunctive relief to restrain plaintiffs from violations of the Unfair Practices Act (Bus. & Prof. Code, ch. 4, div. 7, pt. 2), specifically charging that the plaintiffs were advertising and selling as a standard cleaning service, work which was in fact but a partial service, and thereby misleading members of the public. The trial court made specific findings of fact, based on evidence to support them, that "it is untrue that the ad-

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vertising of said economical grade of service has a tendency to, or does deceive, defraud or mislead the members of the public." Having found no violation or threatened violation of the Unfair Practices Act the trial court properly withheld the requested relief.

The judgments are affirmed.

Edmonds, J., Schauer, J., and Spence, J., concurred.

TRAYNOR, J.—I dissent for the reasons set forth in the dissenting opinion in *State Board of Dry Cleaners v. Thrift-D-Lux Cleaners*, ante, p. 449 [254 P.2d 29].

Gibson, C. J., and Carter, J., concurred.

Appellant's petition for a rehearing was denied April 2, 1953. Gibson, C. J., Carter, J., and Traynor, J., were of the opinion that the petition should be granted.