

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

OLLIS BROTHERS, INC. : CIVIL ACTION  
v. :  
OLLIS & SONS, et al. : NO. 97-7075

MEMORANDUM AND ORDER

Fullam, Sr. J.

February 26, 1998

Plaintiff Ollis Brothers, Inc. is, and has been for many years, engaged in the business of installing garage doors, and related construction activities, under the "Ollis Brothers" name, which has been extensively advertised and is clearly entitled to protection. The defendant, which is owned by two former employees of the plaintiff (who are related to plaintiff's principals), have recently established a similar business a few miles away, under the name "Ollis & Sons." After an evidentiary hearing on plaintiff's request for a preliminary injunction, I ruled that defendant's activities infringed plaintiff's common law trademark, and that the two businesses could not co-exist without substantial changes. Given the family relationships involved, I urged counsel to try to work out an appropriate remedy, by agreement. Although counsel have resolved certain issues, they have not been able to achieve a mutually satisfactory solution to all of the problems involved.

I have concluded that defendant should be required to

adopt a name for its business which clearly distinguishes it from plaintiff's, but that the defendant's principals, whose name is "Ollis," should be permitted to operate under their own names, so long as confusion is avoided. The designation "Chris and Bill Ollis," or some similar name, would be satisfactory, so long as the defendants eliminate any reference to being the "third generation" engaged in the garage door business, and add "established 1997" to distinguish their operation from that of the plaintiff.

The difficult problem arises from the fact that defendant's advertisement in the Yellow Pages impermissibly infringes upon plaintiff's rights, but cannot be completely changed until the next telephone directory is issued. One possibility would be to assume that all persons who call the telephone number listed in the Yellow Pages for the defendant are actually attempting to call the plaintiff, and therefore require defendant to arrange to have all calls to that number transferred to the plaintiff. This, however, would be catastrophic to the defendants, and would be unduly favorable to the plaintiff, since both firms are listed in the Yellow Pages, and it is unrealistic to suppose that everyone who consults the Yellow Pages intends to reach plaintiff's place of business when responding to defendant's advertisement. Moreover, defendant's principals have also been conducting a carpentry/remodeling business which has

long used the listed telephone number. It is highly probable that most of the calls to defendant's listed number will either be personal, or unrelated to garage doors.

I conclude that an appropriate remedy is to require that the defendant, at its own expense, promptly arrange to have the telephone number listed in its Yellow Page advertisements answered by a device which automatically permits the caller to specify which of the two businesses he or she wishes to reach, and which directs the calls appropriately. If this arrangement proves impracticable, or entirely too expensive, an acceptable alternative would be to have defendant's employees perform the same function, in a neutral manner. If this latter alternative is chosen, defendant should be required to maintain a log of every incoming telephone call to that number, and to make that log available for periodic inspection by the plaintiff. In any event, defendant will be required to keep a record of all garage-door installations and related work for the next two years, including the source of referral, gross revenues, and enough information about net revenues to make possible an accounting of any income which should properly be shared with plaintiff.

Defendant will, of course, be required to amend its Yellow Pages advertising as soon as practicable, and all other advertising forthwith. In such advertising, references to defendant's garage-door business may be included, but only in

lettering no larger or ore prominent than the references to the carpentry/remodeling business.

The foregoing constitutes the framework for a preliminary injunction, and defendant will be required to proceed accordingly; but the parties are encouraged to agree upon modifications; and either party may submit to this Court proposed further modifications.

An Order follows.

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OLLIS BROTHERS, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
WILLIAM H. OLLIS, SR., et al.	:	NO. 97-7075

ORDER

AND NOW, this            day of February, 1998, Plaintiff's application for a preliminary injunction is GRANTED. The defendant is directed to comply with the provisions outlined in the accompanying memorandum, until further order of the Court.

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John P. Fullam, Sr. J.